

*United States Court of Appeals  
for the Second Circuit*



**SUPPLEMENTAL  
APPENDIX**



74-1860

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PJS

**75-1253**

**United States Court of Appeals  
FOR THE SECOND CIRCUIT  
Docket Nos. 74-1860, 74-1869, 75-1253**

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

GEORGE STOFSKY, CHARLES HOFF, AL GOLD  
and CLIFFORD LAGEOLES,  
*Defendants-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**SUPPLEMENTAL AND ADDITIONAL JOINT APPENDIX**

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United States Courthouse

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Attorney for Appellee United  
States of America



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UNITED STATES DISTRICT COURT  
Southern District of New York

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UNITED STATES OF AMERICA

v.

GEORGE STOFSKY, CHARLES  
HOFF, AL GOLD, CLIFFORD  
LAGEOLES,

Defendants

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ADDITIONAL DOCKET ENTRIES

(For docket entries from 6-21-73  
to 6-27-74, see pp. 1a-9a of Joint  
Appendix filed under Docket No.  
74-1860)

<u>Date</u>	<u>Proceedings</u>
* * *	
6-28-74	ALL DEFTS.-Filed notice of certification and transmittal of record on appeal to the U.S.C.A. for the 2nd Circuit.
7-16-74	ALL DEFTS.-Filed notice-The record on appeal (supplemental), has this day been certified and transmitted to the U.S.C.A. for the 2nd Circuit.
7-16-74	Filed designation of documents by appellant to be transmitted to the U.S.C.A.
8-15-73	Filed transcript of record of proceedings, dated June 28, 1973.

- 10-10-74 GEORGE STOFSKY and AL GOLD-Filed Defts. affidavit and notice of motion for a new trial ret. 10-18-74.
- 10-10-74 CHARLES HOFF and CLIFFORD LAGEOLES-Filed Defts. affidavit and notice of motion for a new trial.
- 10-23-74 GEORGE STOFSKY and AL GOLD-Filed Stipulation and Order extending Govt's, time to answer Defts. motion for a new trial until 10-25-74 and Defts. time to reply until 10-31-74, dated 10-21-74....Pierce, J.
- 10-30-74 ALL DEFTS.-File Stipulation and Order extending Defts. time to file additional papers in support of their motions for a new trial until 11-6-74....Pierce, J.
- 11-11-74 GEORGE STOFSKY and AL GOLD-Filed Defts. reply affidavit in support of motion for a new trial.
- 11-11-74 GEORGE STOFSKY and AL GOLD-Filed Defts. memorandum of law in support of renewed motion for a new trial.
- 11-11-74 CHARLES HOFF and CLIFFORD LAGEOLES-Filed Defts. reply affidavit in support of motion for a new trial.
- 11-19-74 GEORGE STOFSKY and AL GOLD-Filed Stipulation and Order extending Defts. time to file additional papers in support of their motions for a new trial until 11-11-74....Pierce, J.
- 12-2-74 ALL DEFTS.-Filed Defts. affidavit and notice of motion for an order permitting examination of all orders convening grand juries in the S.D.N.Y. during the period from 1-1-69 to date, ret. 12-16-74.

- 12-23-74 ALL DEFTS.-Filed MEMO ENDORSED on Defts. motion filed 12-2-74 to examine all orders convening grand juries. The motion herein is hereby granted. Submit order on two days notice. SO ORDERED....Pierce, J. (mailed notice)
- 1-2-75 ALL DEFTS.-Filed Order that Defts. motion to examine all orders convening grand juries is granted. The Clerk of the Court is directed to permit Defts. counsel to examine all orders convening regular and special grand juries in the S.D.N.Y. during the period from 1-1-69 through and including the date hereof....Pierce, J. (mailed notice)
- 1-27-75 ALL DEFTS.-Filed Defts. affidavit and notice of motion for an order dismissing the indictment, ret. 2-5-75.
- 2-6-75 ALL DEFTS.-Filed Stipulation and Order that Govt's. time to file opposition to Defts. motion to dismiss is extended until 2-12-75 and Defts. time to reply until 2-19-75. SO ORDERED (Final against all parties)....Pierce, J.
- 2-18-75 Filed Govt's. Memorandum in opposition to Defts. motions to dismiss based on alleged irregularity of Grand Jury Proceedings.
- 2-18-75 Filed affidavit of John C. Sabetta in opposition to Defts. motion to dismiss.
- 2-18-75 Filed letter dated 2-13-75 from U.S. Attorney addressed to Judge Pierce.
- 2-19-75 ALL DEFTS.-filed Defts. memorandum of law in reply to Govt's. objection to motion to dismiss the indictments.
- 2-26-75 CHARLES HOFF and CLIFFORD LAGEOLES-Filed affidavit and Consented Order substituting Defts. attorney.

- 4-2-75 CHARLES HOFF and CLIFFORD LAGEOLES-Filed Defts. affidavit and notice of motion for an order dismissing the indictment.
- 4-2-75 CHARLES HOFF and CLIFFORD LAGEOLES-Filed Defts. memorandum of law in support of motion to dismiss.
- 4-2-75 GEORGE STOFSKY and AL GOLD-Filed Defts. affidavit and notice of motion for an order dismissing the indictment.
- 4-2-75 GEORGE STOFSKY and AL GOLD-Filed Defts. memorandum of law in support of motion to dismiss.
- 4-17-75 ALL DEFTS.-Filed Stipulation and Order extending Govt's. time to file opposition to Defts. motions to dismiss the indictment to 4-18-75....Pierce, J.
- 4-21-75 ALL DEFTS.-Filed Govt's. memorandum of law in opposition to Defts. motions to dismiss the indictment.
- 6-5-75 GEORGE STOFSKY and AL GOLD-Filed Memo Endorsed on Defts. motions to dismiss the indictment, filed 4-2-75. Motion denied....Pierce, J. (mailed notice)
- 6-5-75 CHARLES HOFF and CLIFFORD LAGEOLES-Filed Memo Endorsed on Defts. motion to dismiss the indictment, filed 4-2-75. Motion denied....Pierce, J. (mailed notice)
- 6-5-75 ALL DEFTS.-Filed Memo Endorsed on Defts. motion to dismiss the indictment, filed 1-27-75. Motion denied....Pierce, J. (mailed notice)
- 6-5-75 ALL DEFTS.-Filed Opinion #42533-Defts. motion for a new trial is hereby denied for the reasons stated herein and in this Court's Opinion dated 6-12-74....Pierce, J. (mailed notice)

- 6-9-75 ALL DEFTS.-Filed Govt's. affidavit by Robert R. Maroncelli, Revenue Agent.
- 6-9-75 ALL DEFTS.-Filed Govt's. affidavit in opposition to Defts. motion for a new trial.
- 6-12-75 GEORGE STOFSKY and AL GOLD-Filed Defts. notice of appeal from the Order of Judge Pierce denying the motion for a new trial. Mailed notice to: George Stofsky, 111 Esterwood Avenue, Dobbs Ferry, N.Y., Al Gold, 2077 Center Avenue, Fort Lee, N.J. and U.S. Attorney's Office.
- 6-13-75 CHARLES HOFF and CLIFFORD LAGEOLES-Filed Defts. notice of appeal from the orders denying Defts. motions for a new trial and to dismiss the indictment. Mailed notice to: Charles Hoff, 1824 Cynthia Lane, Merrick, N.Y. 11566, Clifford Lageoles, 340 West 28th Street, N.Y.C. and U.S. Attorney's Office.
- 7-1-75 Filed notice of certification and transmittal of the 2nd supplemental record on appeal to the U.S.C.A.

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RENEWED MOTION FOR A NEW TRIAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA : :

: -against- :

NOTICE OF MOTION

GEORGE STOFSKY, CHARLES HOFF, : 73 Cr. 614 (LWP)  
AL GOLD and CLIFFORD LAGEOLES,

:

Defendants.

-----X

S I R:

PLEASE TAKE NOTICE that upon the annexed affidavit of Elkan Abramowitz, sworn to the 10th day of October, 1974 and the exhibits annexed thereto and upon all the pleadings and proceedings had herein, a motion will be renewed before the Honorable Lawrence W. Pierce, United States District Judge for the Southern District of New York in the United States Court-house, Foley Square, New York, New York on the 18th day of October, 1974 at a time and place set by the Court for an order pursuant to the Fifth Amendment to the United States Constitution and further pursuant to Rule 33 of the Federal Rules of Criminal Procedure (1) seeking the remand of this case presently pending in the United States Court of Appeals for the Second Circuit; and (2) vacating the judgments of conviction against defendants Stofsky and Gold and granting to them a new trial on the ground of newly-discovered evidence, together with such other and further relief as to this Court

may seem just and proper.

Yours, etc.

WEISS ROSENTHAL HELLER & SCHWARTZMAN  
295 Madison Avenue  
New York, New York 10017

By: Elkan Abramowitz  
ELKAN ABRAMOWITZ, a Member of the  
Firm

-and-

ROONEY & EVANS  
521 Fifth Avenue  
New York, New York 10017

By: Paul K. Rooney, Jr.  
PAUL K. ROONEY, A Member of the  
Firm  
(Co-counsel for Defendants George  
Stofsky and Al Gold)

TO:

PAUL J. CURRAN, ESQ.  
United States Attorney  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007.

Dated: New York, New York  
October 10, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :  
-against- :  
GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES, :  
Defendants. :  
-----X  
STATE OF NEW YORK ) : ss.:  
COUNTY OF NEW YORK )

ELKAN ABRAMOWITZ, being duly sworn, deposes and says:

1. I am a member of the firm of WEISS ROSENTHAL HELLER & SCHWARTZMAN, co-counsel for defendants GEORGE STOFSKY and AL GOLD in the above-entitled action, and submit this affidavit in support of the within renewed motion for a new trial pursuant to Fed. R. Crim. P. 33 on the ground of newly disclosed evidence made available by the government to the defendants on September 12, 1974.

2. The basis for this motion is grounded on the fact that the recently disclosed evidence--in large part known by the government during the pendency of the earlier new trial motion but apparently deliberately suppressed from this Court as well as the defense at that time--so seriously affects the

integrity of the verdicts in this case that under any applicable test, it can no longer be assumed that a new trial would not--to use this Court's earlier premise--result in a verdict of acquittal in the event of retrial (A802a and fn. 4).\* In short, in addition to the new issue of apparent prosecutorial misconduct, the recently disclosed evidence--indicating that Jack Glasser's perjury extended from the trial to the government's response to the earlier motion for a new trial, infecting and, respectfully, in our view invalidating both proceedings--so strongly bolsters the defense contention that Glasser retained all moneys he obtained from fur manufacturers that, under all the circumstances, a new trial is mandated.

PRIOR PROCEEDINGS

3. On February 27, 1974, defendants Stofsky and Gold were convicted after a three-week jury trial before this Court of various violations of law in connection with their positions as officials of the Furriers Joint Council of New York. On April 22, 1974, defendants made a motion before this Court for a new trial based upon newly discovered evidence obtained from bank records that the government's principal witness--Jack Glasser--had committed perjury during the trial. The defendants urged that their convictions--based upon perjured testimony concerning a highly material issue--could not properly be per-

---

\* References preceded by the prefix "A" refer to the Joint Appendix, prepared for the appeal in this case; "SB", to the Brief on Appeal submitted on behalf of defendants Stofsky and Gold. Copies of both the Brief and the Appendix are being submitted herewith for the Court's convenience.

mitted to stand, and that the government had breached its obligations under Brady v. Maryland, 373 U.S. 83 (1963), in regard to this perjured testimony.

4. On May 31, 1974, prior to sentencing, the Court denied this motion for a new trial from the bench and later issued a memorandum opinion dated June 12, 1974. A notice of appeal both from the defendants' convictions and from the denial of the new trial motion was filed on June 10, 1974. The brief on behalf of defendants Stofsky and Gold was filed in the United States Court of Appeals for the Second Circuit on August 1, 1974 and oral argument had been scheduled for October 7, 1974.

5. However, on September 12, 1974, prior to service of the government's brief, counsel for defendants received a letter dated September 3, 1974 from Assistant United States Attorney John C. Sabetta stating that the United States Attorney's Office had obtained additional information from various banks relating to the testimony given at trial by Jack Glasser. (A copy of this letter is annexed hereto as Exhibit "A".) On the following day, pursuant to the invitation contained in Mr. Sabetta's letter, defense counsel appeared at the United States Attorney's Office to review this newly disclosed material, and found it to be highly relevant to the prior motion for a new trial. We therefore indicated to the United States Attorney that we believed this new information should be brought to the attention of this Court and, with the

government's consent, an order was signed on September 26, 1974 by the Hon. Walter R. Mansfield, U.S.C.J., staying the pending appeal until the new trial motion could be renewed in this Court. A copy of the stipulation and stay is annexed hereto as Exhibit "B".

THE PRIOR MOTION  
FOR A NEW TRIAL

6. In our original motion, we contended that a new trial was required because of evidence discovered after the trial that Jack Glasser had perjured himself about matters which were central to the defense case, viz. his disposition of money he claimed to have received from fur manufacturers while he was a labor adjuster for the Associated Fur Manufacturers of New York, Inc. Defendants had contended throughout the case that Glasser kept any monies he may have received from manufacturers and that--contrary to his trial testimony--he gave no money whatever to the defendants. The full factual and legal bases for the prior new trial motion are fully set forth at SB 36-50 and are incorporated herein by reference in order to avoid unnecessary repetition. Simply stated, the defendants urged that Mr. Glasser had lied, both during the trial and subsequent thereto, concerning his acquisition of the then known figure of approximately \$120,000.00 in cash which was revealed in his tax returns. Initially--at the trial--he claimed that it had all come from his wife's parents estate--a story, despite probate papers showing no such recor-

ded inheritance, the prosecutor urged was true in his summation and, more significantly, a story which was obviously credited by the jury (SB 39; A626a-28a). After the trial, when that story was proven by the defendants--and then conceded by the government--to have been false, Glasser next claimed that all of the cash deposits came from "jewelry sales"(A797a). Pressed further by the United States Attorney, Mr. Glasser finally claimed--and this Court credited as true on the prior motion--that he received the monies from numerous additional fur manufacturers which he had not identified at the trial, and that he had given additional payoffs to the defendants. He still contended, however, that a large portion of these monies came from his wife's inheritance, as well as miscellaneous, clearly suspicious transactions such as "jewelry sales", "Christmas gifts", "wholesale commissions", "vacation presents" and the like--none of which were substantiated, documented, or reported on his tax returns.

7. In its Memorandum Opinion dated June 12, 1974, this Court found that although Mr. Glasser had lied at the trial, no new trial was required, and accepted as true the government's claim that Glasser had satisfactorily explained his wealth. Finding that there was no prosecutorial misconduct, the Court held that Glasser's subsequent explanation of his perjured trial testimony warranted denial of a new trial, and concluded, essentially, that defense counsel would be unable to use the evidence of cash deposits as support for their theory at a new trial or even that they could have used it

effectively at the prior trial because Glasser had then further inculpated the defendants. Although the Court recognized that the new evidence would have had a "dramatic impact", it further found it "doubtful" that the evidence would have "destroyed Glasser to the extent that the verdict...would have been different"(A804a-805a). Lastly, the Court concluded that denial of the motion was justified because of certain "independent evidence" which seemed to corroborate Glasser's testimony. Respectfully, it is submitted that the evidence which has only now been disclosed by the government has wholly invalidated the entire basis for this Court's prior denial of our new trial motion and that a new trial must now be granted.

THE INSTANT MOTION

8. At the outset, it should be noted that it is doubtful if this Court can again find--as it did earlier--that there has been no prosecutorial misconduct in this case. For it appears that the government possessed the additional relevant financial information prior to this Court's decision on the first new trial motion, but failed to disclose it at that time, either to the defendants or to the Court. In fact, all of the documents shown to us on September 13, 1974--with the exception of those from Chemical Bank--were marked as grand jury exhibits on May 28, 1974, the day before this Court denied the new trial motion from the bench and two weeks before issuance of its subsequent written decision. In light of the fact that the Court relied largely upon the veracity

of Glasser's subsequent explanation of his perjurious trial testimony, we are at a loss to understand why the government waited until now--nearly three months later--to disclose this new information to the defense, and, even more importantly, to the Court. Whatever its reasons, however, the failure to disclose this information constituted an apparently willful suppression of evidence which in and of itself requires that a new trial be granted.

9. Apart from this suppression, however, the new information which has now been revealed clearly requires that the defendants be granted a new trial at which all the evidence relevant to the charges against them may be weighed by a jury. For we have now been informed by the government that Glasser lied once again in his latest story concerning his accumulation of wealth, and that the "explanation" relied upon by this Court in denying the previous new trial motion was "incorrect" (See Sabetta letter, Exhibit "A", annexed hereto). The government does not coherently state what it--or Mr. Glasser --now contends to be truth except to state that Mr. Glasser now recalls that the first payment he received from manufacturers was not in 1964, as he apparently earlier said, but in 1962. (It should be noted parenthetically that the 1964 date must come from the "ex parte" affidavit since the earliest alleged payment previously disclosed to the defense was 1967.) And, the government says, Mr. Glasser now claims that Mrs. Glasser inherited \$30,000.00-\$40,000.00 in "jewelry and other assets including cash and bonds" from her parents but can give no

estimate whatever of how much of that claimed inheritance is included in Glasser's savings accounts in 1972.

10. Moreover, the new bank records themselves reveal over \$161,000.00 in either actual cash deposits or miscellaneous, probable cash deposits between 1962 and 1973. This is nearly three times the amount either this Court or the defendants were aware of at the time of the previous new trial motion. Summaries of the information contained in the bank records for the period 1964 through 1973 have been submitted to this Court by the attorneys for Karl Schwartzbaum on his motion for a new trial, copies of which are annexed hereto as Exhibit "C". These summaries reveal that Mr. Glasser deposited a total of \$156,229.00 in various banks during the period 1964 to 1971. In addition, the records of the Greenwich Savings Bank revealed additional unexplained deposits in 1962 and 1963--all in round amounts of under \$500.00--totalling an additional \$4,950.00. Thus, the total amount of cash and unexplained deposits between 1962 and 1973 is \$161,214.03. Perhaps even more significantly the bank records again confirm that there were virtually no cash deposits after 1970, the year in which the Association uncovered the fact that manufacturers were paying Glasser. Thus, while it is certainly true that Glasser's dealings with manufacturers were far broader than he previously admitted, the inference from this fact that the sums he passed to the defendants were larger than he previously testified--an inference accepted by this Court in suggesting the futility of a new trial (A799a, 803a-804a)--no

longer is valid, even if, respectfully, it ever was. If, as Glasser testified at the trial, he gave Union officials an average of \$3.00 for every \$1.00 he kept, that would mean he took nearly \$500,000.00 in bribes and that these defendants received over \$320,000.00 in payoffs. That is simply beyond belief. In this connection, it must be remembered that the government, during the investigative stage of these proceedings, conducted full tax audits of the defendants as revealed in the 3500 material--audits which revealed nowhere near this kind of net worth. The results of these audits compared to Glasser's apparent net worth--not presented to the jury at the prior trial--certainly more supports the defense contention that Glasser retained all his receipts of cash than it does Glasser's testimony that he passed a substantial part of these receipts on to the defendants.

11. Surely, in light of this new information, the government can no longer ask--or expect--this Court to continue to credit Glasser's unavailing efforts to salvage his perjured trial testimony. Nor can it ask--or expect--this Court to continue to engage in further hopelessly futile efforts to determine what a jury might or might not have believed about Glasser's testimony had it been presented with all the evidence. Glasser has now been shown to have lied--willfully--to the government, to the jury, and to this Court, not once, or twice, but at least four times. And now no one--not the defendants, or the government, or the Court--can have any way of knowing the truth about Mr. Glasser's enormous un-

explained wealth. It is respectfully submitted that the truth about this wealth, fundamental as it is to the charges for which the defendants stand convicted, can only be decided by a jury which will have the opportunity to weigh Glasser's testimony in light of all the available evidence, a jury which will be able to decide--fully and fairly--whether he did in fact make payoffs to these defendants or whether he kept the money he claimed to have received from manufacturers for himself.

12. Neither can it be said any longer that the new evidence which has now been revealed would have resulted in damage to the defendants' case and that it could not be used effectively at trial. For no one knows what may have transpired at the prior trial--and what the jury may have believed--had it heard all the available evidence. Nor can one speculate as to what a jury might believe at a new trial at which not only the bank records but Mr. Glasser's repeated perjury would be before the jury. It is not for the government, or--respectfully--for the Court, to engage in such rank speculation. Now that Mr. Glasser's testimony has been shown to have been so substantially--and repeatedly--false, the defendants are entitled, as a matter of law, to have their case heard by a jury which will be aware of all the relevant evidence.

13. Moreover, it can no longer be suggested that the existence of "independent evidence" is sufficient to support

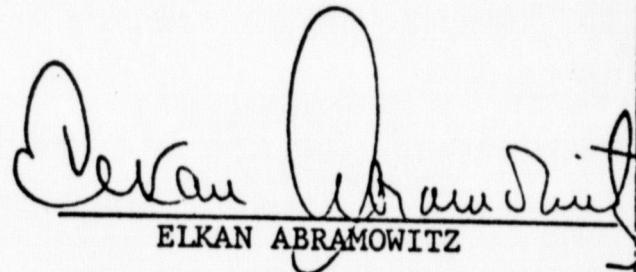
the conviction despite Glasser's proven perjury, for the indictment under which these defendants were tried, charged not only separate crimes, but a single overall conspiracy, and the jury was permitted to consider Glasser's testimony not only against individual defendants on individual counts, but against all the defendants under the single conspiracy count. Thus, it is both impossible and improper to separate Glasser's testimony from the other evidence in the case, and it is both impossible and improper to use other evidence to reach the conclusion that Glasser's testimony at the trial was sufficiently truthful to sustain the convictions. It can simply no longer be said that--regardless of any other evidence--the defendants received a fair trial in view of the central importance of Mr. Glasser's testimony to the government's case and in view of the central issue to which his perjury related, i.e., the question of whether he paid the defendants or kept monies he received for himself.

14. If, indeed, the prior evidence submitted to this Court was insufficient to warrant a new trial--and we do not concede that it was--this new additional evidence surely not only warrants, but requires, the granting of a new trial now. The requirements of due process of law can be satisfied by nothing less.

WHEREFORE, it is respectfully requested that this Court issue a certificate to the United States Court of Appeals for the Second Circuit seeking a remand of this case

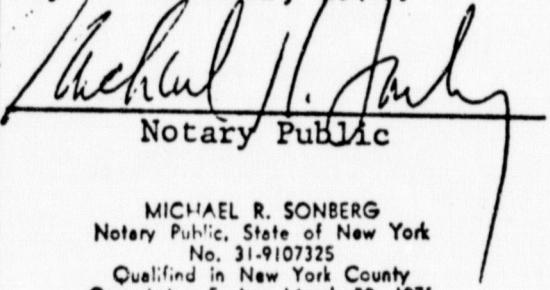
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and that a new trial be thereafter granted. In the alternative, it is respectfully requested that--at the very least--this Court order oral argument and a hearing on this motion.



ELKAN ABRAMOWITZ

Sworn to before me this 10th  
day of October, 1974.



Notary Public

MICHAEL R. SONBERG  
Notary Public, State of New York  
No. 31-9107325  
Qualified in New York County  
Commission Expires March 30, 1976

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EXHIBIT "A"

ADDRESS REPORT TO  
UNITED STATES ATTORNEY  
AND REFER TO  
WITNESS AND NUMBER

JCS

73-0753

A 22  
United States Department of Justice

UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURTHOUSE  
POKLY MOGAN  
NEW YORK, N. Y. 10007

September 3, 1974

Elkan Abramowitz, Esq.  
Weiss Rosenthal Heller & Schwartzman  
295 Madison Avenue  
New York, New York 10017

Re: United States v. George Stofsky, et al.  
United States v. Karl "Jack" Schwartzbaum

Dear Mr. Abramowitz:

In connection with our continuing investigation of the fur industry we have obtained copies of financial records of Jack and Betty Glasser from the following institutions: Chemical Bank, Dollar Savings Bank of New York, E. Lowitz & Co., The East New York Savings Bank, Emigrant Savings Bank, First Federal Savings and Loan Association of New York, and the Greenwich Savings Bank. These records are available at our offices for inspection by counsel for defendants in the Stofsky or Schwartzbaum proceedings. If you or any of the other counsel desire to review these materials, they will be available in the office of Assistant United States Attorney S. Andrew Schaffer.

In our interviews with Mr. Glasser in May 1974, he identified 1964 as the year he first accepted money from a fur manufacturer to arrange a payoff to a union official. In a recent interview with Mr. Glasser he recalled that the first payment from that previously identified group of manufacturers occurred in 1962. Also at that more recent interview Mr. Glasser estimated that Mrs. Glasser had inherited \$30,000 to \$40,000 in jewelry and other assets including cash and bonds from her parents. He was not able to specify how much of that inheritance was included in their savings accounts as of 1972. The estimate by Mr. Glasser dur-

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Elkan Abramowitz, Esq. -2- September 3, 1974

ing the May interviews that \$40,000 to \$50,000 from Mrs. Glasser's parents was included in the savings accounts in 1972 appears to be high and incorrect.

Very truly yours,

PAUL J. CURRAN  
United States Attorney

By:



JOHN C. SABETTA  
Assistant United States Attorney  
Tel.: (212) 264-6423

cc: Paul K. Rooney, Esq.  
Messrs. Rooney & Evans  
521 Fifth Avenue  
New York, New York 10017

Stephen Barasch, Esq.  
27 East 39th Street  
New York, New York 10016

Edward Brodsky, Esq.  
Messrs. Goldstein, Shames & Hyde  
655 Madison Avenue  
New York, New York 10021

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EXHIBIT "B"

Cal.# 216  
Dkt.No. 74-1860  
Short Title USA v. St. F. k., et al.

It is hereby ordered that  
the argument of the appeal be  
and it hereby is adjourned until  
further calendar

Dale A. Marshall  
26 Sept 1974 U.S.C.L.J. 4

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
UNITED STATES OF AMERICA, : :

Appellee, : :

- v - : STIPULATION

GEORGE STOFSKY, CHARLES HOFF, : Docket Nos. 74-1860  
AL GOLD and CLIFFORD LAGEOLES, : 74-1869

Defendants-Appellants. : :

-----x

IT IS HEREBY STIPULATED AND AGREED, by and  
between the United States of America, by Paul J. Curran,  
United States Attorney for the Southern District of New  
York, John C. Sabetta, Assistant United States Attorney,  
of counsel, and defendants-appellants George Stofsky and  
Al Gold, by their counsel Weiss Rosenthal Heller &  
Schwartzman and Rooney and Evans, and defendants-  
appellants Charles Hoff and Clifford Lageoles, by their  
counsel, Stephen Barasch, Esq., that:

1. All proceedings in the appeals herein  
presently pending in the United States Court of Appeals  
for the Second Circuit be stayed;
2. Within fifteen days of the order of the  
United States Court of Appeals for the Second Circuit  
approving the instant stipulation, counsel for defendants-  
appellants George Stofsky, Charles Hoff, Al Gold and

Clifford Lageoles will move in the United States District Court for the Southern District of New York to renew their motion for a new trial in accordance with the reasons expressed in the affidavit of Paul K. Rooney, Esq., attached hereto;

3. In the event of a decision of the United States District Court for the Southern District of New York denying said renewed motion, any appeal taken from the order of the United States District Court for the Southern District of New York denying said renewed motion will be consolidated with the appeals herein;

4. Within twenty-one days of any decision of the United States District Court for the Southern District of New York denying said renewed motion, counsel for defendants-appellants George Stofsky, Charles Hoff, Al Gold and Clifford Lageoles will file revised or supplemental briefs in the consolidated appeals; and

5. Within twenty-one days of the filing of said briefs, the United States of America will file its brief in the consolidated appeals.

Dated: New York, New York

September 19, 1974

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York

A 28

Attorney for Appellee,  
United States of America

By:

John C. Sabetta  
JOHN C. SABETTA  
Assistant United States Attorney

Ethan Abramowitz  
WEISS ROSENTHAL KELLER & SCHWARTZMAN  
295 Madison Avenue  
New York, New York 10017

Daniel K. Rooney  
ROONEY & EVANS  
521 Fifth Avenue  
New York, New York 10017

Attorneys for Defendants-Appellants  
George Stofsky and Al Gold

Stephen Barasch  
STEPHEN BARASCH, ESQ.  
27 East 39th Street  
New York, New York 10016  
Attorney for Defendants-Appellants  
Charles Hoff and Clifford Lageoles

SO ORDERED:

Arthur R. Manfield  
U.S.C.J.

A 29

EXHIBIT "C"

39

	<u>E.N.Y. Savings</u>	<u>Emigrant Savings</u>	<u>Greenwich Savings</u>	<u>Dollar Savings</u>	<u>Chemical</u>
1964-(\$18,410)					
1st Quarter		\$ 1,800	\$ 8,200		
2nd Quarter		950	500		
3rd Quarter		2,000	1,960		
4th Quarter		1,500	1,500		
1965-(\$15,700)					
3rd Quarter				\$15,700	
1966-( - 0 - )					
1967-(\$11,875)					
1st Quarter		1,000	3,500		
2nd Quarter			4,525		
4th Quarter	\$ 2,850				
1968-\$13,800)					
1st Quarter	1,800				
2nd Quarter	4,100				
3rd Quarter		3,820		1,080	
4th Quarter	3,000				
1969-(\$34,050)					
1st Quarter	3,000				\$ 5,400
2nd Quarter					5,350
3rd Quarter	5,300	2,500			/ 400
4th Quarter	6,900		4,800		400
1970-\$13,650)					
1st Quarter	350				900
2nd Quarter	3,100				1,650
3rd Quarter	5,650				2,000
1971-(\$400)					
3rd Quarter					400
TOTAL (\$107,885)	<u>\$36,050</u>	<u>\$13,570</u>	<u>\$26,065</u>	<u>\$15,700</u>	<u>\$16,500</u>

	<u>E.N.Y.</u>	<u>Emigrant</u>	<u>Greenwich</u>	<u>Dollar</u>	<u>Chemical</u>
1964-(\$1,676.36)					
1st Quarter		\$ 539.39		\$ 504.65	
2nd Quarter		82.62	\$ 549.70		
1965/6 - (-0-)					
1967-(\$1,407.09)			40.80		
2nd Quarter					
3rd Quarter	\$ 751.05				
4th Quarter	615.24				
1968-(\$2,494.99)			1,912.27		
3rd Quarter					\$ 582.72
4th Quarter					
1969-(\$17,393.83)					
1st Quarter				6,086.50	
2nd Quarter				7,321.38	
3rd Quarter				1,569.37	
4th Quarter		1,193.38		1,223.20	
1970-(\$7,948.23)					
1st Quarter	163.80			1,170.30	
2nd Quarter				1,990.51	
3rd Quarter	550.00			2,459.30	
4th Quarter				1,614.52	
1971-(\$5,409.56)					
1st Quarter				733.35	
2nd Quarter	1,220.40			1,258.55	
3rd Quarter				1,121.26	
4th Quarter				1,076.50	
1972-(\$6,005.71)					
2nd Quarter	476.60			1,734.00	
3rd Quarter				1,220.50	
4th Quarter	2,574.31				
1973-(\$6,043.26)					
1st Quarter	243.30			1,300.72	
2nd Quarter	243.30			2,778.30	
3rd Quarter				694.92	
4th Quarter				582.72	
TOTAL (\$18,379.03)	<u>\$ 6,838.00</u>	<u>\$ 3,768.46</u>	<u>\$ 549.70</u>	<u>\$ 504.65</u>	<u>\$ 36,718.10</u>

EXHIBIT C - SUMMARY OF EXHIBITS A AND B

<u>1964:</u>	Cash	-	\$ 18,410.00
	Misc.	-	<u>1,676.36</u>
	Total		\$ 20,086.36
<u>1965:</u>	Cash	-	\$ 15,700.00
	Misc.	-	<u>- 0 -</u>
	Total		\$ 15,700.00
<u>1966:</u>	Cash	-	<u>- 0 -</u>
	Misc.	-	<u>- 0 -</u>
	Total		<u>- 0 -</u>
<u>1967:</u>	Cash	-	\$ 11,875.00
	Misc.	-	<u>1,407.09</u>
	Total		\$ 13,282.09
<u>1968:</u>	Cash	-	\$ 13,800.00
	Misc.	-	<u>2,494.99</u>
	Total		\$ 16,294.99
<u>1969:</u>	Cash	-	\$ 34,040.00
	Misc.	-	<u>17,393.83</u>
	Total		\$ 51,443.83
<u>1970:</u>	Cash	-	\$ 13,650.00
	Misc.	-	<u>7,948.23</u>
	Total		\$ 21,598.23
<u>1971:</u>	Cash	-	\$ 400.00
	Misc.	-	<u>5,509.56</u>
	Total		\$ 5,809.56
<u>1972:</u>	Cash	-	<u>- 0 -</u>
	Misc.	-	<u>\$ 6,005.71</u>
	Total		\$ 6,005.71
<u>1973:</u>	Cash	-	<u>- 0 -</u>
	Misc.	-	<u>\$ 6,043.26</u>
	Total		<u>\$ 6,043.26</u>
	<u>GRAND TOTAL:</u>		<u>\$156,264.03</u>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES,

Defendants.

NOTICE OF MOTION73 CR 614  
(LMP)

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of STEPHEN BARASCH, sworn to the 9th day of October, 1974, and the exhibits annexed thereto, the trial before a jury, and upon all of the pleadings and proceedings heretofore had herein, a motion will be made before the Honorable Lawrence W. Pierce, United States District Court Judge for the Southern District of New York, in Room 2804 of the United States Courthouse, Foley Square, New York, New York, on a date to be set by the Court, for an order pursuant to Rule 33 of the Federal Rules of Criminal Procedure, setting aside the verdict against the defendants CHARLES HOFF and CLIFFORD LAGEOLES, and granting them a new trial on the ground of newly discovered evidence, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York  
October 9, 1974

Yours, etc.

STEPHEN BARASCH, ESQ.

By:

Stephen Barasch  
Attorney for Defendants  
CHARLES HOFF and CLIFFORD LAGEOLES  
27 East 39th Street  
New York, N.Y. 10016  
(212) MU 9-1844

A 34

TO: Paul J. Curran, Esq.  
United States Attorney  
Southern District of New York  
Foley Square  
New York, New York 10007

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-against-

GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES,

Defendants.

AFFIDAVIT

73 CR 614  
(LMR)

STATE OF NEW YORK )  
COUNTY OF NEW YORK )  
SS:

STEPHEN BARASCH, being duly sworn, deposes and  
says:

1. I am a member of the Bar of the State of New York and I represent the Appellants CHARLES HOFF and CLIFFORD LAGEOLES. I undertook this representation following their convictions under Indictment 73 CR. 614 for the purposes of pursuing their Appeal, as well as to undertake any other necessary proceedings.

2. This affidavit is submitted in support of defendant's motion pursuant to Rule 33 of the Federal Rules of Criminal Procedure for a new trial on the ground of newly discovered evidence, and for such other and further relief as to the Court may seem just and proper.

3. Following the filing of the two briefs in the United States Court of Appeals for the Second Circuit on behalf of my clients (Docket No. 74-1869) as well as the brief on behalf of GEORGE STOFSKY and AL GOLD (Docket No. 74-1860), a Stipulation was entered into by your deponent, together with other counsel in

this matter, whereby it was agreed that all Appellants would renew their motion for a new trial before this Court. Circuit Court Judge Walter R. Mansfield, signed an order adjourning the pending Appeal pursuant to this Stipulation. Attached is the Stipulation and Order (Exhibit "A").

4. The grounds in support of this motion are segmented into two parts. Those events occurring prior to September 3, 1974, and those matters which arose after that date. All of the grounds arising during this trial, and which it is submitted requires a new trial, were set forth in the brief filed on behalf of CHARLES HOFF and CLIFFORD LAGEOLES. These grounds remain pertinent at this time with respect to this motion for a new trial. Thus, rather than reallege and reprint those legal and factual arguments in support of a new trial, attached hereto is a copy of the brief (Docket No. 74-1669, Exhibit "B"), setting forth those grounds. At the time of filing this brief the letter dated September 3, 1974 from Assistant United States Attorney John C. Sabetta had not reached my office.

5. On September 3, 1974 the letter was forwarded to me, and it is attached hereto as Exhibit "C". This letter reveals, among other things, the further deliberate concealment by Mr. and Mrs. Glasser of the sources and amounts of large sums of money accumulated by the Glassers over the period of the last twelve years. The Court recognizes the entire issue before the jury in this case, with respect to HOFF and LAGEOLES, was the question of the receipt and alleged distribution by Mr. Glasser of various sums of money during the Indictment period. As set forth in the attached brief, the only material testimony the jury had before them concerning whether or not they were guilty of the

charges in the Indictment was the testimony of both Glassers. We now find, as a result of the September 3rd letter, that not only did the Glassers perjure themselves before the jury in this case, but they continued their perjury through May of this year when they made certain misleading representations to the Assistant United States Attorney concerning the alleged sources of these funds.

6. The government, while preparing their brief and, no doubt, considering that they would have to take a position concerning the Glassers' perjury before the jury, decided finally to make available a huge amount of documents, which can be made available to the Court if desired, indicating not only a previously unknown, but also a shocking situation involving receipts of money by Glasser of well over One Hundred Fifty Thousand Dollars (\$150,000.00). Accompanying the motion filed with this Court on behalf of Karl Schwartzbaum, 70 Cr. 616, there is an affidavit of an accountant, GEORGE J. HARREN, which, based on the incomplete records available to him for his examination, indicate deposits of cash, and possibly some checks of well over this amount. Incorporated by reference is that affidavit which indicates those deposits. This analysis further indicates the intentional concealment by the Glassers of material facts relating to their finances which were pertinent at the trial of this matter.

7. For all of the reasons set forth above, together with the exhibits attached hereto, it is submitted that the motion for a new trial should be granted. Both CHARLES HOFF and CLIFFORD LAGEOLES have been convicted by the word of one man, Jack Glasser, whose word, in turn, was supported by that of Mrs. Glasser. It is clear that both of them must have conspired together to obstruct justice in dovetailing their perjurious

testimony to be given at the trial which resulted in convictions of both of these Defendants. It is also clear that Jack Glasser is a shakedown artist, a violator of the tax laws and a man willing to testify falsely recognizing that such testimony may lead to convictions of those persons whom he implicates. Putting aside that Mr. Glasser is an obvious criminal, what is more important is that the jury who had to evaluate his testimony, never were aware of the scope of his criminal activities. Moreover, he is a perjurer, whose perjury covers an obviously wide area, and is of a continuing nature. His perjured testimony, supported by the perjured testimony of his wife, was the basis for the conviction of both CHARLES HOFF and CLIFFORD LAGEOLES. Had the extent of their perjury been known to the jury, then it must be conceded that the possibility of any conviction in this case, where such testimony is the sole basis for the conviction, is remote and improbable. For all of these reasons it is respectfully requested that the motion for a new trial be granted.

---

STEPHEN BARASCH

Sworn to before me this  
21 day of October 1974

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\* \* \*

MOS:slc  
73-0756  
A-423

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x  
UNITED STATES OF AMERICA :  
- v - : 73 Cr. 614 (LWP)

GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES,  
Defendants.

- - - - -x  
UNITED STATES OF AMERICA : AFFIDAVIT OF  
John C. Sabetta

- v - : 73 Cr. 616 (LWP)  
KARL "JACK" SCHWARTZBAUM, :  
Defendant. :

- - - - -x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN C. SABETTA, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney in  
the office of Paul J. Curran, United States Attorney for the  
Southern District of New York. I served as the government's  
trial counsel in United States v. George Stofsky, et al., 73  
Cr. 614, and as the government's assistant trial counsel in  
United States v. Karl "Jack" Schwartzbaum, 73 Cr. 616. I  
make this affidavit in opposition to the motions by defend-  
ants in Stofsky for issuance of a certificate seeking a  
remand of that case from the United States Court of Appeals  
for the Second Circuit and thereafter for an order granting  
a new trial, and in opposition to the motion by the defen-  
dant in Schwartzbaum for a new trial or alternatively an  
evidentiary hearing.

JCH:rm

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3. Defendants' second round of motions seeking new trial: re-presented on bank records of Jack and Betty Glaser made available to their attorneys by the government pursuant to a letter dated September 3, 1974, which I sent to defendants' attorneys; a copy of that letter is attached to each of the affidavits submitted in support of defendants' motions. Those bank records were part of a larger group of bank and brokerage account records pertaining to accounts of Mr. and Mrs. Glaser which the government made available to defendants' attorneys pursuant to my letter of September 3, 1974.

4. Defendants now extravagantly claim in error: (a) that "the new bank records themselves reveal over \$101,000.00 in either actual cash deposits or miscellaneous, probable cash deposits between 1962 and 1973" -- assertedly some three times more than the sum of deposits previously known to the Court and defendants (Affidavit of Elkan Abramovitz, sworn to on October 19, 1974, p. 3) (emphasis added); (b) that this new evidence "wholly invalidate[s] the entire basis for this Court's prior denial of [defendants'] new trial motion" (id. at 5); and (c) that in any event a new trial is required because the government deliberately and wilfully suppressed pertinent evidence received by it during the pendency of the first new trial motions (id. at 1-2, 6-7).

5. Defendants' charge of deliberate government suppression of evidence is singularly inappropriate and baseless. It was the government which, out of courtesy, produced to defendants the "new" bank documents which they rely upon here. Those "new" records add nothing of significance to determination of the first new trial motions, and are consistent with the position advanced by the government at the time those motions were pending. In large measure the "new" bank records

pertain to savings accounts of Mr. and Mrs. Glazier at the Emigrant Savings Bank and The Greenwich Savings Bank during the period 1962 through 1966. Defendants themselves apparently considered those records to be of no significance in determining the first new trial motions since their earlier subpoenas to those banks requested only records beginning in 1967. Indeed the only "new" bank documents received by the government in May 1974 which were of any conceivable, but then indeterminable, significance were the incomplete Chemical Bank records. In the course of subsequent investigation, the pendency of which was referred to in the affidavits filed in opposition to defendants' first new trial motions, those records were found to be consistent with the income, expenses and deposits analysis set forth in the affidavits in opposition to the first new trial motions. The accuracy of that finding has been confirmed by defendants who, after lengthy analysis of the "new" bank records, have raised no issue with respect to it. In sum, the "new" bank records were produced to defendants out of a desire to make absolutely sure defendants were given full opportunity to make any argument imaginative counsel could devise. The palpably weak and fallacious arguments defendants have fashioned from those "new" records confirms the latter's insubstantiality. Defendants own recognition of that fact serves to explain their felt need to unfurl baseless claims of prosecutorial misconduct.

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5. The claimed significance for the "new" bank records is founded on an analysis by George J. Harren, a Certified Public Accountant retained by defendants, of deposits in the accounts of Jack and Betty Glasser during the years 1964 through 1973 at the following banks: Chemical Bank, Dollar Savings Bank, The East New York Savings Bank, Emigrant Savings Bank and The Greenwich Savings Bank. The claims are without merit.

New Data Examined By Defendants  
In September 1974

6. Defendants claim that "new" bank records reveal over \$156,000 in deposits during the years 1964 through 1973 and over \$161,000 during the years 1962 through 1973. The following columns show the "new" bank records and the records which defendants and the Court possessed at the time of the first new trial motions:

<u>Bank</u>	<u>Additional Documents Provided by Government Pursuant to September 3, 1974 Letter</u>	<u>Documents Already Possessed and Included As Exhibits to Affidavits In Support of Defendants' Previous New Trial Motions</u>
Chemical Bank	Monthly ledgers for December 1963 through December 1971 and June 1972 through August 1973 with all available deposit slips for the corresponding period; copies attached hereto as Exhibit 1.	
Dollar Savings Bank	Transcript of account from January 1, 1960, through July 11, 1966, when account closed; copy attached hereto as Exhibit 2.	

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3-424

The East  
New York  
Savings  
Bank

Transcript of accounts from October 17, 1967, when first account opened, through October 2, 1973, when last account closed, with available deposit slips; copies attached as Exhibit F to Abramowitz affidavit and as Exhibit G to Esbitt affidavit.

Emigrant  
Savings  
Bank

holder cards for period from February 16, 1962, when account opened, to June 30, 1967; copies attached hereto as Exhibit 3.

Transcript of account from January 1, 1967, through March 31, 1970, when account closed, with available deposit slips for that period; copies attached as Exhibit H to Abramowitz affidavit and as Exhibit E to Esbitt affidavit.

The  
Greenwich  
Savings  
Bank

Transcript of account from February 16, 1962, when account opened, through April 2, 1971, when account closed; copy attached hereto as Exhibit 4.

Transcript of account from January 1, 1967 through April 2, 1971, with available deposit slips for that period; copies attached as Exhibit G to Abramowitz affidavit and as Exhibit D to Esbitt affidavit.

A list of all deposits in the Glasser accounts as shown in the documents described above is attached hereto as Exhibit 5.

7. Laying aside defendants' erroneous computations, which are analyzed together with other miscellaneous factual errors in defendants' papers in Exhibit 6 attached hereto, there was deposited in the Glasser accounts during the period January 1, 1962 through December 31, 1973, a total of \$157,683.53. Of that total, \$66,416.96 was shown by the bank records possessed by defendants and the Court at the time of the first new trial motions; of the remaining \$91,271.37, \$12,117.93 represents deposits in the Chemical Bank account during the years 1971 through 1973, which all concede are irrelevant since Mr. Glasser during those years had departed the fur market. Accordingly, the total gross deposits pertinent to the instant motions as shown by the "new" bank

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records is \$70,153.89, less than one-half the amount defendants claim the "new" bank records reveal.

Report of the "New" Bank Records

8. While the affidavits in support of defendants' present motions are lengthy and repeat much of the rhetoric in their earlier papers about the necessity for a new trial because of the falsity of Glasser's testimony about the source of the \$120,000 in his accounts, they contain only two new arguments as to why the bank records mandate new trials. The one new argument in the Stoifly papers appears at pages 8-9 of the Abramowitz affidavit, sworn to on October 10, 1974:

"Moreover, the new bank records themselves reveal over \$161,000.00 in either actual cash deposits or miscellaneous, probable cash deposits between 1962 and 1973. . . . If, as Glasser testified at the trial, he gave Union officials an average of \$1.00 for every \$1.00 he kept, that would mean he took nearly \$500,000.00 in bribes and that these defendants received over \$320,000.00 in payoffs. That is simply beyond belief."

The one new argument in the Schwartzbaum papers appears at pages 10-11 of the affidavit of Edward Brodsky, sworn to on October 8, 1974:

"If Glasser received \$14,000 from six manufacturers of which he kept \$9,043 as he testified at trial (A. 49-50), using the same ratio, he would have received \$296,000 from more than one hundred manufacturers, of which he kept \$156,229 . . . .

Moreover, if it had been known to the defense at the time of trial that Glasser was receiving payments during this period from perhaps one hundred or more manufacturers, rather than Glasser's altered recollection of conversations with the defendant would have been severely undermined."

9. The fundamental error underlying both of these arguments, and the disabling limitation of the gross deposits

analysis, is the indefensible assumption that every dollar deposited in the Glasser accounts during the period 1962 through 1973 is directly attributable to union fur manufacturer payoffs to Mr. Glasser. That baseless assumption necessarily excludes consideration of salaries earned, dividends, possible other sources of income detailed by Mr. Glasser in his interviews with government counsel in May 1974 and possible transfers between accounts.

10. The fallacious nature of defendants' analysis is best illustrated by reference to the "new" bank documents, and the deposits reflected therein, first viewed by defendants' counsel in September 1974. For convenience of analysis, that new data is treated in two sub-groups:

deposits in savings accounts during the period 1962 through 1966, and Chemical Bank checking account deposits beginning in December 1968.

Savings Account Deposits, 1962-1966

11. Defendants assert that the total gross deposits during the period 1962 through 1966 made in savings accounts at the Dollar Savings Bank, Emigrant Savings Bank and The Greenwich Savings Bank, which total \$56,041.20, are attributable to union manufacturer cash payoffs to Glasser.

(a) More than half of that total, \$38,032.33, is of undetermined character because the deposit tickets for that period for the Dollar and Greenwich accounts are unavailable. Furthermore, \$854.15 of that total is attributable to known check deposits in the Emigrant account.

(b) Even more significantly, however, \$19,403.41 of the total \$56,041.20 is attributable to two single deposits of extraordinary and undetermined character: on January 7, 1964 there was a deposit of \$6,308.44 in the Greenwich account, and on July 14, 1965 there was a deposit of \$12,600.00 in the Dollar account.

J. H. Green  
73-0750  
4-473

Defendants' assumption that there were extremely many deposits of unknown character totalling nearly \$20,000 -- one or both of which may have been check deposits and both of which are in marked disparity with the other deposits of that period -- are cash deposits attributable to manufacturers' payoffs is totally without foundation.

(c) Finally, during this 1962-1966 period, \$4,004.65 was withdrawn from those accounts, some portion of which may subsequently have been redeposited.

12. The pattern of periodic small cash deposits in Mr. Glasser's savings accounts during the years prior to 1967 is, on the whole, consistent with the statements made by Mr. Glasser during the interviews with me in May 1974. (As shown in the papers filed by the government in opposition to the earlier new trial motions, Mr. Glasser stated in the May 1974 interview that he began to funnel payoffs to union officials from numerous fur manufacturers, retaining a part for himself, in 1964.)

13. Finally, it is surprising that defendants would now place such emphasis on the total deposits in the Glasser accounts for a period beginning in 1962 (or 1964). Previously, defendants considered 1967 to be the earliest year for which the Glasser bank records had any significance. In their earlier subpoenas to The East New York Savings Bank, the Emigrant Savings Bank and The Greenwich Savings Bank, they requested only records beginning in 1967. If records of any prior years could have been of any conceivable significance to defendants in the presentation of their original new trial motion, surely they would have requested them at that time.

Chemical Bank Deposits

14. As a part of their claim that Mr. Glasser received payoffs from union manufacturers exceeding \$160,000, defendants include deposits made by Mr. and Mrs. Glasser in their Chemical Bank checking account in 1971, 1972 and 1973 totaling \$17,317.95. Those deposits occurred after Mr. Glasser left the market and any arguable payoff to him had ceased and nearly a year after the date of the last payoff to a union official testified to by Glasser at the trial. As such they are totally irrelevant and their inclusion in defendants' analysis here is grossly misleading. During the pendency of the earlier new trial motions, defendants possessed similarly irrelevant material with respect to savings account deposits in those latter years, but there correctly chose not to use it.

15. The new records from Chemical Bank are, furthermore, consistent with the information provided by Mr. Glasser during the May 1974 interviews as discussed at pages 1 and 2 of the file memorandum of a further interview with Mr. Glasser on August 20, 1974, a copy of which is attached hereto as exhibit 7.

Alleged Government Suppression  
of Evidence Received By It At The  
Time of the First New Trial Motions

16. Defendants assert that during the pendency of the first new trial motions the government received financial information, i.e., the records of deposits in the savings accounts from 1952 through 1966 and certain of the Chemical Bank checking account records, which was relevant to determination of those motions, and which it knowingly and deliberately suppressed from defendants and this Court. Defendants then continue that that alleged suppression in and of itself

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requires a new trial. That charge is contradicted by the pertinent facts which are set forth below.

17. On April 22, 1974, counsel for defendants in Stofsky served papers in support of a new trial motion based on certain bank records of Jack and Betty Glasser which they had subpoenaed, part during and part after the Stofsky trial. On May 21, 1974 counsel for Schwartzbaum served papers in support of a new trial motion based on the same records.

18. Following receipt of the papers in support of the original new trial motion in Stofsky, the government commenced an investigation of the allegations in these papers as well as a broader investigation of the fur manufacturing industry. As discussed in my affidavit sworn to on May 23, 1974, and previously submitted in opposition to defendants' first new trial motion in Stofsky, government counsel interviewed Mr. and Mrs. Glasser on May 3, 6, 13 and 14, 1974. In addition grand jury subpoenas were issued on May 9 and 10, 1974, for additional financial records of Mr. and Mrs. Glasser, including subpoenas for records from Chemical Bank and the Dollar Savings Bank as well as for records from The East New York Savings Bank, Emigrant Savings Bank and the Greenwich Savings Bank, which covered a broader time period than had been specified in the earlier subpoenas issued by the Stofsky defendants. Copies of the grand jury subpoenas directed to those five institutions are attached hereto as Exhibit 8. In response to those subpoenas, The Greenwich Savings Bank and the Emigrant Savings Bank forwarded documents with letters dated May 14 and May 22, 1974, respectively--including documents for the years 1962 through 1966; representatives of Chemical Bank and The East New York Savings Bank delivered documents to me on May 21, 1974; and a representative of the Dollar Savings Bank delivered documents to me on May 22, 1974.

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19. When I reviewed the above documents, it was apparent that everything called for in the subpoenas had not been produced particularly by Chemical Bank. While the Chemical Bank subpoena had called for all monthly statements and deposit slips for the period beginning January 1, 1960 through December 31, 1973, the Bank had produced only copies of monthly statements for the months December 1968 through June December 1971 and July 1972 through August 1973, and had produced no deposit slips.

20. I was aware that new trial motions were pending in Stofsky and Schwartzbaum with sentencing of the Stofsky defendants scheduled for May 31, 1974, and sentencing of Schwartzbaum scheduled for June 4, 1974. In my judgment, however, the bank records which had been produced in response to the grand jury subpoenas did not establish that any statement in the government's papers which had been submitted in response to the Stofsky and Schwartzbaum motions was erroneous. On May 30, 1974, Assistant United States Attorney V. Thomas Fryman, Jr., who had served as trial counsel in Schwartzbaum, and I met with Silvio J. Mollo, Chief Assistant United States Attorney for the Southern District of New York. We discussed with him whether we should make an immediate disclosure to defendants' counsel and the Court of the partial financial records of Mr. and Mrs. Glasser. Alternatively, we considered whether we should wait until we obtained all the records available and determined their relevance to the new trial motion, with production of any documents which could even arguably provide support for

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defendants' position to be made to defense counsel at that time. Mr. Mollo concurred that the best procedure to follow was the latter one, and we determined to continue the investigation. I pointed out to Mr. Mollo at that meeting that we had informed the Court in the papers which we had submitted in opposition to the pending Stofsky and Schenck new trial motions that a further investigation of the fur manufacturing industry was under way.

21. On information and belief, the following week during my absence from the office Mr. Fryman reviewed with Thomas D. Edwards, Chief of the Criminal Division of the United States Attorney's Office, the matters discussed during the May 30 meeting with Mr. Mollo. Mr. Edwards agreed that we should not make a piece-meal production of the incomplete financial records, but rather pursue the continuing investigation.

22. During June through August 1974 we attempted to obtain all of the remaining financial records that were available. Attached hereto as Exhibit 9 are copies of letters dated June 24, 1974 and July 10, 1974 and July 19, 1974 to Chemical Bank concerning production of additional materials. All of the remaining available Chemical documents were finally produced on August 16, 1974, including deposit slips for deposits shown on the monthly statements for the months December 1963 through December 1971 and June 1972 through August 1973 when the account was closed. I was informed at that time by a representative of Chemical Bank that monthly statements for the Glasser accounts for the months prior to December 1963 had been destroyed, that the monthly statements for January 1972 through May 1972 were missing, and that no

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other deposit slips were available. I also requested additional documents from the Emigrant Savings Bank, which I received with a covering letter dated July 25, 1974.

23. Following receipt and analysis of the additional Chemical Bank documents, which completed our receipt of the documents available, Mr. Fryman and I interviewed Mr. Glasser in Miami, Florida on August 23, 1974. A copy of a memorandum of that interview, with certain names as well as certain paragraphs concerning matters other than Mr. Glasser's finances redacted, is attached hereto as Exhibit 7. Mr. Glasser's statements during that interview were consistent with his statements to me during the May 1974 interviews with the following exceptions. First, he said that he had begun receiving payoffs from manufacturers in 1962, which was inconsistent with his earlier statement that those payoffs had begun in 1964. Second, he estimated his wife's inheritance at \$30,000 to \$40,000 in value and could not specify what portion of that was included in his savings accounts. In the May 1974 interviews Mr. Glasser had estimated that \$40,000 to \$50,000 of the moneys in his savings accounts had come from his wife's inheritance. Mr. Fryman and I thereafter determined that the fact of those inconsistencies should be made known to defendants' counsel, as well as the bank records for the period 1960 through 1966 for whatever use defendants' counsel could make of them in connection with Mr. Glasser's inconsistent statements. Moreover, while the Chemical Bank deposits were consistent with the income, expense and deposits analysis set forth in Exhibit 1 of my affidavit sworn to on May 23, 1974, Mr. Fryman and I determined to make available to defendants' counsel the records for that checking account as well.

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23. Mr. Fryman and I then prepared the letter to defendants' attorneys advising them that the materials which we had obtained were available for their review. I signed the letter in my office on Sunday, September 1, 1974, and left it to be mailed on Tuesday, September 3, 1974, since I was leaving for a two week trip to Europe the evening of September 1, 1974. Mr. Fryman was away from New York from September 1, 1974, through September 10, 1974. When he returned to the office on September 11, 1974, he discovered that because of a mistake the letter had not been mailed; it was then mailed to defendants' attorneys on that date.

25. In light of the foregoing, defendants' assertion that the government during the pendency of the first new trial motion deliberately suppressed evidence it knew to be pertinent and favorable to defendants is without merit.

Request for Hearing

26. Alternatively the motion in Schwartzbaum asks for "an evidentiary hearing on the issues raised by defendant's motion herein." The affidavit submitted in support of the Schwartzbaum motion makes two points as to why the Court should order such a hearing: first, to permit counsel to subpoena further bank records of Mr. and Mrs. Glasser (p. 14); and second, to allow access to all details of the government's further investigation of the fur manufacturers identified by Mr. Glasser as making payoffs and memoranda of any interviews with any of those manufacturers (pp. 12-14).

27. An evidentiary hearing is not necessary in order to allow Schwartzbaum to subpoena further records because the government has already subpoenaed the bank records for the period January 1, 1960, through December 31, 1973, and has given defendants all of the records produced in response to those subpoenas. With regard specifically to the

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Chemical Bank records, attached hereto as Exhibit 10 is an affidavit of Victor Quidri, a Clerk in the Legal Department of Chemical Bank, which states that the following items for the accounts of Mr. and Mrs. Glasser are not available: (1) monthly statements prior to December 1968; (2) monthly statements for January 1972 through May 1972; and (3) deposit slips for deposits included in those two groups of monthly statements.

23. With respect to the second point, the government paper submitted in opposition to the earlier motion and at page 9-10 of this affidavit describe in detail the actions of the government attorneys with respect to Mr. Glasser.

The government has not produced the names of other fur manufacturers identified by Mr. Glasser or information about any subsequent interviews with such manufacturers.

In my judgment disclosure of that information would seriously compromise the continuing investigation of the fur industry. Furthermore, even if certain manufacturers during the investigation denied making payments to Mr. Glasser as he claimed, that should not help defendants here. Sam Sherman, Harry Roosel and Sol Cohen denied Mr. Glasser's charges against them from March 1973, when the original indictment here was filed, until March 1974, when they pleaded guilty.

Schwartzbaum's Knowledge of Bank Records Prior to Trial

24. The affidavit by Schwartzbaum's present counsel, Edward Brodsky, submitted in support of Schwartzbaum's present motion states at page 5: "Following the instant trial (A. 45), defense counsel learned about the bank records which revealed Glasser's cash deposits."

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Mr. Elhan Abramowitz, the attorney for the Stoffsky defendants, has informed me that he met with Schwartzbaum's trial counsel, William Esbitt, prior to the Schwartzbaum trial and told Mr. Esbitt that he had obtained bank records of accounts of Mr. and Mrs. Glasser showing large cash deposits from 1967 through 1970 and that those records were available to Mr. Esbitt. A copy of a memorandum which I prepared summarizing a telephone discussion of this matter with Mr. Abramowitz on August 21, 1974 is attached hereto as Exhibit 11.

*John C. Sabetta*  
JOHN C. SABETTA  
Assistant United States Attorney

Served to before me this  
24<sup>th</sup> day of October, 1974



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EXHIBIT 5

JACK AND BETTY GLASSER  
 INDIVIDUAL DEPOSITS BY BANK AS SHOWN IN BANK RECORDS  
SUBPOENAED BY GOVERNMENT AND DEFENDANT

CHEMICAL BANK

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
12/5/68		25.00		
12/9/68	300.00			
12/31/68	800.00	10.00		
<u>Total</u>	<u>\$1,190.00</u>	<u>\$35.00</u>		<u>\$1,225.00</u>
1/6/69		187.50		
1/27/69	4,500.00			
3/31/69	900.00			
4/14/69				
4/21/69	1,500.00		187.50	
4/24/69			500.00	
5/5/69			78.88	
5/12/69	200.00			
5/28/69	3,850.00		35.00	
6/16/69			70.00	
6/25/69			225.00	
7/7/69			187.50	
7/21/69			167.00	
7/28/69			50.00	
8/1/69				
8/20/69			300.00	
9/5/69	400.00		91.68	
10/3/69			214.00	
10/8/69			20.00	
11/3/69			59.80	
11/5/69	268.00		15.00	
11/10/69			246.40	
<u>Total</u>	<u>\$12,018.00</u>	<u>\$2,335.26</u>	<u>\$300.00</u>	<u>\$14,653.26</u>
1/12/70		210.00		
1/20/70	600.00			
2/24/70	300.00			
3/10/70		60.00		
4/6/70	350.00		200.00	
4/9/70	400.00			
5/5/70		85.30		
5/15/70		31.31		
5/19/70		14.00		
6/11/70	100.00			
6/17/70	800.00		10.00	
7/6/70			200.00	
7/23/70	300.00			
7/27/70		23.00		
7/28/70	1,700.00			
8/3/70		59.80		
8/4/70		25.50		
8/19/70		14.00		
8/25/70		100.00		
8/27/70		37.00		
9/21/70		776.00		
10/6/70		200.00		
10/15/70		15.52		
10/16/70		46.00		
10/26/70		244.00		
11/4/70		146.30		
12/7/70		242.10		
<u>Total</u>	<u>\$47,756.00</u>	<u>\$2,684.43</u>		<u>\$47,234.43</u>

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
1/5/71		364.10		
2/24/71		126.85		
3/4/71		242.10		
4/5/71		381.45		
5/18/71		288.20		
6/3/71		188.90		
6/11/71	250.00	150.00		
7/7/71		393.90		
7/27/71	120.00			
8/2/71		76.50		
8/3/71		202.70		
8/23/71		34.06		
9/3/71		193.90		
9/7/71	100.00			
9/17/71	200.00			
9/27/71	100.00			
10/5/71	144.00			
10/5/71		256.00		
11/1/71		76.50		
11/5/71	100.00			
12/6/71	200.00			
<u>Total</u>	<u>\$1,214.00</u>	<u>\$2,975.16</u>		<u>\$4,189.16</u>

[JANUARY - MAY 1972 ledgers and corresponding deposit slips not available]

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
7/5/72	150.00	115.00		
7/6/72		210.00		
8/4/72			277.00	
8/9/72			250.00	
8/24/72		250.00		
9/5/72	150.00	115.00		
9/12/72		217.00		
10/2/72		115.00		
10/4/72		453.30		
10/31/72		115.00		
11/2/72			51.00	
11/3/72		243.30		
12/4/72		243.30		
<u>Total</u>	<u>300.00</u>	<u>\$2,076.90</u>	<u>\$578.00</u>	<u>\$2,954.90</u>

1/2/73		115.00		
1/3/73		372.09		
2/5/73			452.93	
2/28/73		117.40		
3/5/73		243.30		
4/2/73			325.00	
4/3/73		243.30		
4/13/73		2,210.00		
6/29/73	300.00	21.60		
7/3/73		357.80		
7/6/73		215.50		
<u>Total</u>	<u>\$300.00</u>	<u>\$2,805.60</u>	<u>\$2,777.60</u>	<u>14,375.10</u>

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## A 60

DOLLAR SAVINGS BANK

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
7/11/61			500.00	
10/16/61			950.00	
12/26/61			1,100.00	
<u>Total</u>			<u>\$2,550.00</u>	<u>\$2,550.00</u>
4/20/62			500.00	
5/15/62			400.00	
7/3/62			300.00	
9/17/62			925.00	
11/8/62			250.00	
<u>Total</u>			<u>1,000.00</u>	<u>\$3,375.00</u>
1/17/63			253.71	
<u>Total</u>			<u>\$253.71</u>	<u>\$253.71</u>
3/12/64			\$504.65	
<u>Total</u>			<u>\$504.65</u>	<u>\$504.65</u>
7/12/65			1,000.00	
7/14/65			12,600.00	
7/30/65			900.00	
8/9/65			600.00	
8/12/65			600.00	
<u>Total</u>			<u>\$15,700.00</u>	<u>\$15,700.00</u>

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## THE EAST NEW YORK SAVINGS BANK

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
10/17/67	751.00			
12/27/67	2,850.00	365.24		
<u>Total</u>	<u>\$3,601.00</u>	<u>\$365.24</u>		<u>\$3,966.24</u>
2/14/68	1,800.00			
4/8/68			3,000.00	
5/20/68	1,250.00			
10/28/68	3,000.00			
<u>Total</u>	<u>\$6,050.00</u>		<u>\$3,000.00</u>	<u>\$9,050.00</u>
2/7/69		118.88		
3/14/69	2,000.00			
3/31/69	1,000.00			
4/30/69		8.00		
7/29/69	4,000.00			
8/20/69	1,300.00			
12/23/69	4,800.00			
12/26/69	2,100.00			
<u>Total</u>	<u>\$15,200.00</u>	<u>\$126.88</u>		<u>\$15,326.88</u>
2/24/70	350.00	163.80		
4/6/70	2,500.00			
4/9/70	600.00			
7/28/70	3,500.00			
8/3/70	2,150.00			
9/23/70	550.00			
<u>Total</u>	<u>\$9,650.00</u>	<u>\$163.80</u>		<u>\$9,813.80</u>
4/7/71		400.00		
5/7/71		820.40		
<u>Total</u>		<u>\$1,220.40</u>		<u>\$1,220.40</u>
5/4/72		275.80		
6/5/72		200.80		
12/13/72		2,574.31		
<u>Total</u>		<u>\$3,050.91</u>		<u>\$3,050.91</u>
1/4/73		243.30		
6/4/73		243.30		
<u>Total</u>		<u>\$486.60</u>		<u>\$486.60</u>

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EMIGRANT SAVINGS BANK

Date	Cash	Checks	Undetermined	Total
2/16/62	250.00			
2/26/62	200.00			
3/13/62	100.00			
5/22/62	100.00			
5/23/62	100.00			
5/25/62	100.00			
6/5/62	150.00			
6/7/62	100.00			
6/7/62		45.00		
6/14/62	100.00			
6/21/62	200.00			
6/29/62	77.35			
7/6/62		60.16		
7/13/62	100.00			
7/20/62	250.00			
7/31/62	200.00			
8/8/62	250.00			
8/30/62	250.00			
9/5/62	200.00			
9/18/62	250.00			
10/1/62	200.00			
10/3/62	100.00			
10.3/62	150.00			
10/11/62	300.00			
10/31/62	200.00			
11/23/62		71.18		
12/12/62	400.00			
	\$4,327.35	\$176.34		<u>\$4,503.69</u>
1/2/63	50.00			
1/14/63	230.00			
1/16/63	147.37			
7/15/63	1,300.00			
7/17/63	350.00			
8/5/63	850.00			
8/12/63	700.00			
8/14/63		55.80		
8/19/63	650.00			
8/30/63	500.00			
9/9/63	250.00			
9/10/63	250.00			
11/12/63	800.00			
12/13/63	500.00			
<u>Total</u>	<u>\$6,577.37</u>	<u>\$55.80</u>		<u>\$6,633.17</u>

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d-416

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<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
1/2/64	400.00			
1/13/64		539.39		
1/20/64	200.00			
2/13/64	500.00			
2/24/64	700.00			
4/2/64	200.00			
4/7/64	300.00			
4/10/64	450.00			
5/4/64		82.62		
7/14/64	1,100.00			
8/3/64	900.00			
11/10/64	1,500.00			
<u>Total</u>	<u>\$6,250.00</u>	<u>\$622.01</u>		<u>\$6872.01</u>
3/20/67	1,000.00			
4/24/67		40.80		
<u>Total</u>	<u>\$1,000.00</u>	<u>\$40.80</u>		<u>\$1,040.80</u>
7/5/68	970.00			
8/29/68	2,850.00	942.27		
<u>Total</u>	<u>\$3,820.00</u>	<u>\$942.27</u>		<u>\$4,762.27</u>
10/6/69	2,500.00	613.06		
10/17/69		82.57		
10/24/69		93.35		
10/31/69		93.35		
11/12/69		93.35		
11/17/69		107.35		
11/24/69		108.35		
<u>Total</u>	<u>\$2,500.00</u>	<u>\$1,191.38</u>		<u>\$3,691.38</u>

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THE GREENWICH SAVINGS BANK

Date	Cash	Checks	Undetermined	Total
2/10/62			500.00	
3/16/62			150.00	
5/22/62			100.00	
5/23/62			50.00	
5/29/62			100.00	
5/31/62			100.00	
6/7/62			100.00	
6/14/62			100.00	
6/22/62			100.00	
7/5/62			100.00	
7/17/62			200.00	
7/30/62			250.00	
8/2/62			300.00	
8/30/62			200.00	
8/31/62			250.00	
9/11/62			150.00	
9/25/62			250.00	
10/5/62			500.00	
10/15/62			500.00	
11/14/62			50.00	
11/26/62			200.00	
11/27/62			52.50	
<u>Total</u>			100.00	
			\$4,302.50	<u>\$4,302.50</u>
1/2/63			50.00	
1/7/63			250.00	
1/14/63			478.33	
10/7/63			400.00	
<u>Total</u>			\$1,178.33	<u>\$1,178.33</u>
1/2/64			400.00	
1/7/64			6,808.44	
2/13/64			400.00	
3/16/64			600.00	
4/2/64			200.00	
4/7/64			300.00	
5/7/64			549.70	
7/14/64			510.00	
8/3/64			1,000.00	
8/17/64			450.00	
11/10/64			1,500.00	
<u>Total</u>			\$12,718.14	<u>\$12,718.14</u>
4/5/67	2,100.00	1,420.06		
5/16/67	3,900.00			
5/22/67	550.00	25.00		
6/2/67			50.00	
<u>Total</u>	\$6,550.00	\$1,445.06	— \$50.00	<u>\$1,045.06</u>
9/10/68	1,080.00			
<u>Total</u>	\$1,080.00			<u>\$1,080.00</u>
10/10/69	4,500.00		82.57	
11/10/69	34,122.57			
<u>Total</u>	34,122.57			<u>34,122.57</u>

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EXHIBIT 7

WTF, JR. UNITED STATES GOVERNMENT  
73-0753  
D-17 Memorandum

DEPARTMENT OF JUSTICE

TO : Files

DATE: September 3, 1971

FROM : JOHN C. SABETTA, V. THOMAS FRYMAN, JR.  
Assistant United States AttorneysSUBJECT: United States v. Stofsky; United States v. Schwartzbaum  
Further Interview with Jack Glasser

On Friday, August 23, we interviewed Jack Glasser at the Federal Building in Miami, Florida, and reviewed with him further financial records which we had obtained. The interview began at approximately 6 p.m. and concluded at approximately 8:30 p.m. Mrs. Glasser was in the hospital last week, and we were not able to interview her.

1969 Income and Deposits

We asked Mr. Glasser about the deposits shown by the Chemical Bank records, particularly for the year 1969 when the Glassers deposited \$14,653.26 into their account there: \$12,018.00 in cash, \$2,335.26 in checks and \$300.00 in one or the other. Those deposits added to the deposits and interest in 1969 in the savings accounts of Mr. and Mrs. Glasser totalled \$42,921.37, or \$6,657.75 more than the \$36,263.62 total of funds which we calculated that Mr. Glasser received in 1969 based on our earlier interviews.

The largest cash deposit in the Chemical account, \$4,500 on January 27, 1969, Mr. Glasser believes came from cash received from manufacturers in late 1968 which he had held in his safe deposit box. Mr. Glasser had previously told us that he had received substantial sums of money from manufacturers in December 1968, but the bank records do not show any substantial deposits in any of his accounts during that month. In contrast, the records of the Glassers' savings account show cash deposits of \$2,350 in December 1967 and cash deposits of \$6,300 in December 1969. The Chemical Bank records are not available for December 1967; the Chemical Bank records for December 1969 show cash deposits of \$400.

Mr. Glasser said he could not think of any sources of income other than those he had already described to us to account for

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the other deposits in 1969. We pointed out to him the following correlation between certain cash deposits and stock purchases shown on records from E. Lowitz & Co.:

January 24, 1969, purchased stock for \$3,271.25;  
January 27, 1969, deposited \$4,500 in cash in  
Chemical account; January 29, 1969, E. Lowitz  
& Co. credited the Glasser account with a check  
from Chemical Bank for \$3,271.25.

April 17, 1969, purchased stock for \$10,380.50;  
April 21, 1969, deposited \$1,500 in cash in  
Chemical account; April 22, 1969, E. Lowitz &  
Co. credited the Glasser account with a check  
from Chemical Bank for \$1,500.50 (balance of  
\$8,880.00 paid by check from The Greenwich Savings  
Bank).

May 26, 1969, purchased stock for \$3,650; May  
28, 1969, deposited \$3,850 in cash in Chemical  
account; June 2, 1969, E. Lowitz & Co. credited  
the Glasser account with a check from Chemical  
Bank for \$3,650.00.

The relation between the stock purchases and the cash deposits did not refresh Mr. Glasser's recollection of any other source of funds.

If the January 27, 1969, cash deposit is subtracted from the total 1969 deposits because it is properly attributable to 1968 income, the 1969 deposits then exceed the funds which we calculated that Mr. Glasser received in 1968 by \$2,157.75. A possible explanation of this gap is that our earlier estimate was based on a conservative treatment of the 1969 income disclosed in the earlier Glasser interviews: items about which Mr. Glasser expressed doubts were eliminated and a lower figure was used where he gave a range of figures for an item. If questionable items are included and higher figures are used, the gap disappears.

#### Funds in Savings Accounts and Inheritance

While in our earlier interviews, Mr. Glasser had only told us about payments from manufacturers beginning in 1964, he stated on August 23 that he first accepted money from a fur manufacturer to arrange a payoff to a union official shortly before

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March 18, 1962, when he suffered a heart attack and was away from his job for several months. He first received such payments from [REDACTED], and he believes his heart attack was caused by his shock in learning shortly before the heart attack that [REDACTED] was discussing something on the telephone with Mr. Greenberg, Glasser's boss. Glasser feared that [REDACTED] had told Mr. Greenberg about the payment, but he later learned that [REDACTED] had not.

Mr. Glasser said that as he received funds from the manufacturers, in this early period he deposited his portion of them in his accounts at the Greenwich and Emigrant banks. Before looking at the bank records, he said they would show deposits for a brief period before March 18, 1962, a gap of several months with no deposits while he was ill, and increasing deposits thereafter. The Greenwich and Emigrant records show several deposits from February 16, 1962, through March 16, 1962; no deposits thereafter until May 22, 1962; and frequent cash deposits beginning May 22, 1962. The Dollar Savings Bank records show the following deposits: 12/26/61, \$1,100; 4/20/62, \$500; 5/15/62, \$400.

Mr. Glasser maintained that Mrs. Glasser had inherited \$30,000 to \$40,000 in jewelry and other assets including cash and bonds from her parents. He was inexact about the value of each category of items which Mrs. Glasser had inherited and about what had happened to the inheritance. He said that he and Mrs. Glasser had savings accounts prior to 1960 totalling about \$10,000, and part of these moneys may have come from Mrs. Glasser's parents. He remembered savings accounts at the Dollar Savings Bank and First Federal Savings and Loan which was located at 170th Street.

The statement in our papers in opposition to the new trial motions that approximately \$40,000 to \$50,000 of the moneys in the savings bank accounts came from Mrs. Glasser's parents appears to be high and incorrect.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X  
UNITED STATES OF AMERICA, : 73 Cr. 614  
: (LWP)

-against-

GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES, : REPLY AFFIDAVIT

Defendants :

- - - - - X  
STATE OF NEW YORK )  
) SS:  
COUNTY OF NEW YORK )

ELKAN ABRAMOWITZ, being duly sworn, deposes and says:

1. I am a member of the firm of WEISS ROSENTHAL  
HELLER & SCHWARTZMAN, co-counsel for defendants GEORGE STOFSKY  
and AL GOLD in the above-entitled action, and submit this  
affidavit in reply to the affidavit of JOHN C. SABETTA,  
Assistant United States Attorney, sworn to the 26th day of  
October, 1974 and in further support of defendants' renewed  
motion for a new trial pursuant to Fed. R. Crim. P. 33 on the  
ground of newly discovered evidence made available by the  
government to the defendants on September 12, 1974.

2. At the outset, it should be noted that defendants  
do not choose to burden this Court with a point-by-point  
refutation of the escalated rhetoric contained in the patently  
insufficient response submitted by the government in opposition  
to our renewed motion. Rhetoric confuses, never clarifies,  
and despite the bulk of both verbiage and documents the issue

before this Court is not whether defense counsel are being "extravagant" in their claims, but whether the perjury which permeated the trial and continued through the previous motion warrants a new trial - a trial at which the evidence discovered both by defense counsel and the government after the trial can once and for all be presented to the jury for a full and fair resolution of all the facts. It will be the function of this affidavit to attempt to refocus the court's attention to the significance of (1) the newly disclosed evidence and (2) the suppression thereof as both bear on the issue of whether the perjury warrants a new trial.

THE NEWLY DISCLOSED EVIDENCE

3. The government's papers ask this Court to concern itself with trivial arguments about the precise figures disclosed by the bank records relating to Mr. Glasser's accounts, claiming that the total is \$157,000.00 rather than \$161,000.00. This motion, however, cannot be made to turn on whether a particular figure is precisely accurate; the bank records themselves are incomplete. The fact is that the government concedes that the totality of the bank records now available -- new and old combined -- demonstrate that Mr. Glasser deposited a minimum of \$157,688.73 in cash or unexplained form during the period from 1962 through 1973. This alone is sufficient to demonstrate that the inheritance story concocted by Mr. Glasser to explain his accumulated wealth is patently false. It is clear that none of the savings accounts in the four banks which Mr. Glasser admits he had during 1962 through 1973 contained monies receiv

from any inheritance, whether it be one of \$90,000.00 to \$100,000.00 as Mrs. Glasser testified at trial (A. 178a-79a), of \$40,000.00 to \$50,000.00 as was stated to this Court on the first motion for a new trial (A. 748a), or of \$30,000.00 to \$40,000.00, as Mr. Glasser appears to have told the government in August 1974 (Sabetta Affidavit, Par. 23). An examination of the Glassers' savings accounts reveals the impossibility that any of them contained the kind of inheritance money which Mr. Glasser even now claims they received. The Emigrant account was opened in January 1962 with a deposit of \$250.00. The Greenwich account was opened in February 1962 with a deposit of \$500.00. The East New York Savings Bank account was opened in October 1967 with a deposit of \$751.05. The Dollar Savings Bank account was opened some time prior to January 1, 1960 (the exact date is not determinable) and on that date had a balance of only \$2,459.68. Thus none of the monies accumulated in these accounts came from the kind of inheritance which Mr. Glasser still apparently contends he received. Arguments about whether the total deposits amounted to \$161,000.00 or \$157,000.00 simply miss the point: the fact is that Mr. Glasser lied in his testimony at trial, and he is continuing to lie to this very date. As indicated in my affidavit of October 10, 1974, neither the defendants, nor the government, nor the Court now has any way of knowing the truth about Mr. Glasser's accumulated wealth. And it is this fact - not the precise total amount of deposits - which mandates and requires a new trial.

4. Attempting to evade this obvious and compelling fact - that no one now knows the truth about Mr. Glasser's testimony - the government refers to "possible other sources of income" to explain the deposits. (Sabetta Affidavit, Par. 9). It further argues that portions of the newly revealed evidence are "consistent" with Mr. Glasser's earlier explanation. Both of these arguments reveal the vacuity of the government's position: it is essentially arguing that this Court should deny the new trial motion because the government is satisfied that some of Mr. Glasser's explanations of his proven perjury may have been true. But, the fact that the government is satisfied with some of Mr. Glasser's story is no basis for denying this motion. Glasser has given at least three different "explanations" so far, and there is simply no basis for believing that the latest one is any more truthful than the first one was. There is no basis to believe - and no reason why a jury would believe - that the source of any of the deposits now proven to have been made by Mr. Glasser was other than from cash payoffs from fur industry manufacturers. And a jury might well believe that Mr. Glasser's perjury extends not only to his accumulated wealth but to his alleged payoffs to the defendants, for as noted below, it is simply incredible that Mr. Glasser passed on to the defendants anywhere near the amounts of money he was taking in payoffs.

5. The government has once again attempted to shift the burden of proof to the defendants in arguing that the defendants never subpoenaed pre-1967 documents (Sabetta affidavit, par. 13), thus indicating that the defendants

considered these documents to be insignificant. Surely the government is aware that prior to its letter dated September 3, 1974, there had never been the slightest suggestion made to the defendants that Glasser claimed he had accepted any payoffs whatsoever prior to 1967. Glasser's trial testimony contained no such suggestion. Nor, despite the inference to the contrary in Mr. Sabetta's affidavit, was there any indication of this claim in either the government's opposing papers on the first new trial motion (A. 742a-51a) or in the Court's opinion denying that motion (A. 787a). Whether there was any such suggestion contained in the "ex parte" affidavit submitted on that motion we obviously do not know. But defense counsel is not required to be omniscient: we can hardly be expected to subpoena documents which, to the best of our knowledge, would have been totally irrelevant to the issues in the case. The government's effort to shift to the defendants the burden of obtaining these documents - the importance of which we could not possibly have known - is a patently disingenuous attempt to evade its own responsibility for conducting a proper investigation into this matter and for failing to reveal the existence of these additional documents at the time of the earlier new trial motion.

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6. The government seeks to reduce the importance of the newly revealed pre-1967 deposits in the Dollar, Emigrant and Greenwich Savings Banks by arguing that the amount of those deposits attributable to manufacturers is much smaller than their conceded \$56,041.20 gross sum (Sabetta affidavit, Par. 11). Of its argument, the only point which is valid

is that only \$854.15 of that entire amount were known check deposits. There is simply no reason to presume that any portion of the remainder was not cash. Nor is there any reason to presume that the "extraordinary deposits of unknown character" of \$6,808.44 and \$12,600.00 were anything other than cash which Glasser had received from manufacturers and kept in some other place before depositing. The fact remains that there is no proof as to the character and source of all of these deposits and a jury could believe that Glasser kept each and every red cent he obtained from manufacturers; the size and frequency of these cash and "undetermined" deposits certainly warrants such an inference especially when compared to the lack of proof that defendants had anywhere near the kind of money the government now concedes Glasser to have had. In this connection, it should be noted parenthetically that, hidden on Page 5 of Exhibit 6 to the government's affidavit is an accusation that the moving affidavit contained a "factual error" in stating that the government's full tax audits of the defendants had not revealed net worths conceivably consistent with the theory that defendants had shared in large payoffs (Abramowitz affidavit, sworn to October 10, 1974, Par. 10). Exhibit 6 claims that the "Internal Revenue Service did not conduct 'full tax audits' of the Stofsky defendants". In this connection, the Court's attention is respectfully invited to Exhibit A to this affidavit, photocopies of the audit reports of defendants Stofsky, Hoff and Gold, furnished to the defense pursuant to a pre-trial demand for discovery and inspection. The audit reports are accompanied by report transmittals, each of which

contains the following phrase: "A detailed audit has been conducted...". Those reports reflect adjustments made to the income and deductions claimed by the defendants on their tax returns, adjustments which indicate that the investigating agents went beyond the returns themselves in order to make their judgments. It is thus apparent that the defendants do not possess anywhere near the kind of net worth Glasser maintains - a net worth which instantly would have been revealed had a similar audit of Glasser's returns been conducted. Thus, the audits of the defendants reveal no objective evidence to support claims by Glasser that he gave any of the defendants large sums of money, and, in fact, support the defense theory that he kept all money obtained from manufacturers.

SUPPRESSION OF EVIDENCE

7. Despite all the proffered explanations, the government concedes that it possessed much of the new evidence and information concerning the pre-1967 payoffs before Mr. Sabetta signed his May 23, 1974 affidavit, before the Court denied the new trial motion from the bench on May 31, 1974, and before the Court's written decision was filed on June 14, 1974. Moreover, regardless of which Assistant United States Attorney approved which decision, the government admits that it deliberately decided not to reveal this evidence either to the defendants or to the Court. All the claims about a "broader investigation" of the fur manufacturing industry obscure the fact that the investigation which

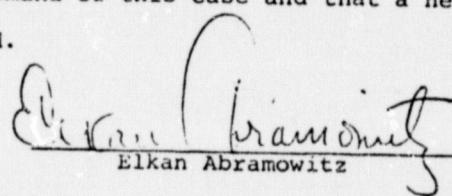
followed defendants' first new trial motion appears to have been commenced as a result of and primarily directed toward the perjury disclosed by that motion. Rather than reveal to the defendants the new information the government had received from the banks, or, request that the Court delay decision on the motion pending completion of the investigation, the prosecution simply decided to remain silent, leaving the defendants and the Court ignorant of the real situation. That so many Assistant United States Attorneys were consulted on the decision demonstrates that the prosecution was aware of the possible importance of the evidence it possessed; in taking it upon itself not to reveal the evidence, the government necessarily accepted the risk of attempting to be its own judge.

8. Suppression, of course, does not require an action taken in bad faith. It is enough that the government knew of the evidence and recognized - or surely should have recognized - its possible value. It is enough that a deliberate decision was made not to reveal it to the defendants or to the Court. That the evidence did not conclusively establish that any statement contained in the government's papers was erroneous (Sabetta affidavit, Par. 20) is immaterial. The evidence clearly was relevant and possibly useful to the defendants and to the Court in regard to the then-pending motion. It is for the Court, not the government, to determine the perjurious nature of statements. The government's further interviews with Jack Glasser have nothing whatever to do with the obligations to disclose

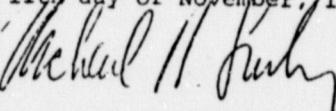
evidence. And if the government wished to delay confronting Glasser with the new evidence until the subpoena return was complete, their unmistakable obligation, at minimum, was to request that the Court delay decision on the motion until they had completed investigating the matter. That they did not do so was their conscious decision and they must bear the consequences which flow from it.

9. The fact of suppression does not require, in and of itself, that the decision on the previous motion be reversed. What suppression does require, as set forth in our memorandum of law submitted herewith, is that the test applied by the Court in determining the new trial motion be changed and eased. As therein set forth, we submit that minimally under the eased test, if not any other test, the newly discovered evidence, when combined with the evidence before the Court on the first motion, requires that the defendants be afforded a new trial.

WHEREFORE, for all of the reasons heretofore stated, it is respectfully requested that this Court issue a certificate to the United States Court of Appeals for the Second Circuit seeking a remand of this case and that a new trial be thereafter granted.

  
Elkan Abramowitz

Sworn to before me this  
11th day of November, 1974.

  
Michael R. Sonberg

MICHAEL R. SONBERG  
Notary Public, State of New York  
No. 31-9107325  
Qualified in New York County  
Commission Expires March 30, 1976

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\* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

- v - : 73 Cr. 614

GEORGE STOFSKY, et al., :

Defendants. :

-----X  
APPEARANCES:

WEISS, ROSENTHAL, HELLER & SCHWARTZMAN  
295 Madison Avenue  
New York, New York 10017  
By: ELKAN ALBANOVITZ, ESQ.  
and  
PAUL K. RODNEY, ESQ.  
521 Fifth Avenue  
New York, New York 10017

Attorneys for Defendants Stofsky and Gold

STEPHEN BARASCH, ESQ.  
27 East 39th Street  
New York, New York 10016

Attorney for Defendants Eoff and Lagedolce

PAUL J. CURRAN, ESQ.  
United States Attorney  
One St. Andrews Plaza  
New York, New York 10007  
By: JOHN C. CARLUCCIO  
V. THOMAS FERRARI, JR.  
Assistant United States Attorneys

Attorneys for United States of America

LAWRENCE W. PIERCE, D.J.

INTERIM ATTORNEY'S OPINION

Following jury verdicts of guilty on February 28, 1974 of various counts in an indictment the defendants herein moved on April 22, 1974 for a new trial based on newly-discovered evidence concerning the personal finances of the government's chief witness, Jack Glasser. More precisely, it was alleged that it had been discovered that during the years 1967 through 1970 Glasser and his wife had deposited over \$57,000 in a series of frequent cash transactions in three separate New York banks. The defendants argued that this evidence demonstrated that Jack Glasser had committed perjury during the trial. Moreover, this was said to bolster the defense theory that while it appeared that Glasser had indeed accepted payments from various manufacturers no portion of these payments had in fact been turned over to the defendants. Rejecting the suggestion of prosecutorial misconduct, this Court held that the new evidence--the key to which was in defense counsel's hands during the trial--was insufficient to support the conclusion that a new trial had to be granted.

Based on additional information, also concerning the Glassers' finances, the defendants have again moved for

a new trial. It appears that the Glassers' deposits in various checking and savings accounts exceeded the amounts previously disclosed during the first motion for a new trial. The defendants also urge that a finding of prosecutorial misconduct be made since it appears that at least portions of this additional information were in the government's possession while the first new trial motion was being considered and that, on these grounds, a new trial be granted.

The Charge of Governmental Suppression

There is no question but that while the first new trial motion was sub judice the government had in its possession material which arguably was pertinent to the disposition of that motion. Indeed the government has acknowledged that at least some of these records had some "conceivable . . . significance." Affidavit in Opposition, ¶4 at 3. Nevertheless, the government unilaterally decided not to make a "piccennal" disclosure of any of this material. While there has been no showing that the course adopted here was not taken in good faith--in fact, the opposite appears to be the case--the Court thinks that such a course clearly was highly inappropriate and that the failure to disclose the records--no matter how incomplete--constituted an error in judgment. See Unit 1 States v. Posner, Slip Op.

Docket No. 74-2290 at 3269 (2d Cir. April 29, 1975).

However, this Court does not agree with the position pressed by the defendants that the government's deliberate decision not to disclose the incomplete records discovered after the end of the trial intra facto warrants the application of a standard different from that used in ruling on the first motion for a new trial. The issue, rather, is whether there was any prejudice to the defendants. United States v. Rosner, suntex. As the lower Court stated in Rosner: "Where post-trial suppression is alleged . . . the court's proper inquiry is into the effect of the disclosures on any new trial motion that has been made." United States v. Rosner, 72 Cr. 782, Slip Op. at 23 (S.D.N.Y. Aug. 15, 1974).

Here the defendants have totally failed even to allege any prejudice. The government en sponte revealed all the information it had to the defendants and agreed to have the appellate process stayed pending the renewal of the new trial motion before this Court. The defendants have now had an opportunity to fully air all their contentions based on all the evidence available. In short, the Court finds that the government's failure to disclose the material in question, while regrettable, did not prejudice the defendants and accordingly this aspect of the motion is denied.

The New Evidence

As noted, the new evidence concerns the Glassers' personal finances. Whereas it appeared at the first new trial motion that the Glassers had made cash deposits from 1967-1970 amounting to nearly \$58,000 now it appears that the deposits made, whether in cash or checks, totalled--as the government concedes--over \$157,000 during the periods from January 1, 1952 through December 31, 1973. It is clear that Glasser's testimony at trial concerning the source of his wealth, that is, that it was derived in the main from an inheritance left to his wife, was untruthful. As the Court concluded in its first opinion Glasser "has engaged in an effort to conceal information, and has given false, or deliberately misleading testimony with respect to the source of his savings." United States v. Stofsky, Slip Op. at 11-12. The material submitted to this Court on this new trial motion strongly reaffirms this conclusion but adds nothing substantively different to what was presented in the first motion for a new trial. In short, it is more of the same. Whether Glasser had secreted \$58,000 or \$157,000 dollars in his checking and savings accounts as such would in this Court's view have little significance at a new trial. Glasser's testimony concerning the source of his savings was

directly impeached during the trial of these defendants and additional evidence on this point "would not have changed the quantum of the impeaching effect." Stafford, supra at 22.

The Court is not unmindful of the defense theory that Glaser retained all the payments from the manufacturers and the further allegation that the amounts of the deposits demonstrate this fact. However, as the Court pointed out before in denying the first motion for a new trial, the size of the deposits do not at all necessarily establish that Glaser kept all the payments. A more reasonable and more damaging explanation would be that the extent of the scheme involving the defendants was far more widespread than previously known. Moreover, the defense theory was fully presented during the trial and apparently rejected by the jury.

The motion for a new trial is hereby denied for the reasons stated herein and in this Court's Opinion dated June 12, 1974.<sup>1/</sup>

SO ORDERED.

Dated: New York, New York  
June 4, 1975

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LAWRENCE W. PIERCE  
U. S. D. J.

FOOTNOTE

1. The Court finds United States v. Seijo, Slip Op. Docket No. 74-2313, 74-2436 (2d Cir. April 23, 1975) inapposite. In Seijo the government had inadvertently failed to disclose evidence in its possession during the trial. Here the government discovered and first came into possession of the evidence after the trial. Thus the test used in Seijo is not applicable here.

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MOTION TO DISMISS THE INDICTMENT  
ON THE GROUND THAT THE TERM OF  
THE GRAND JURY HAD EXPIRED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

:

-against-

:

NOTICE OF MOTION

GEORGE STOFSKY, CHARLES HOFF, :  
AL GOLD and CLIFFORD LAGEOLES, :  
Defendants.

73 Cr. 614 (LWP)

-----X

UNITED STATES OF AMERICA, :

:

-against-

:

73 Cr. 616 (LWP)

KARL "JACK" SCHWARTZBAUM, :  
Defendant. :

-----X

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of ELKAN ABRAMOWITZ, ESQ., sworn to the 23rd day of January, 1975, and the affidavit of EDWARD BRODSKY, ESQ., sworn to the 23rd day of January, 1975, and upon all the proceedings heretofore had herein, the undersigned will move this Court, Honorable Lawrence W. Pierce, United States District Judge, on the 5th day of February, 1975, at a time and place to be fixed by the Court, for an order dismissing the indictments herein on the ground that the term of the grand jury which returned the indictments had expired before the indic-

ments were voted, thereby rendering said indictments invalid, and for such other, different, and further relief as to the Court may seem just and proper.

Dated: New York, New York  
January 23, 1975

Yours, etc.,

WEISS ROSENTHAL HELLER & SCHWARTZMAN

By: Evan Schwartzman  
A Member of the Firm  
295 Madison Avenue  
New York, New York 10017  
Tel. No. (212) 725-9200

-and-

ROONEY & EVANS

By: Paul K. Rooney, Jr.  
A Member of the Firm  
521 Fifth Avenue  
New York, New York 10017  
Tel. No. (212) 682-4343  
Co-Counsel for Defendants Stofsky  
and Gold (and, for purposes of  
this motion, co-counsel for  
defendants Hoff and Lageoles).

GOLDSTEIN, SHAMES & HYDE

By: Edward E. May  
A Member of the Firm  
655 Madison Avenue  
New York, New York 10021  
Tel. No. (212) 838-3700  
Attorneys for Defendant Karl "Jack"  
Schwartzbaum

TO:

HON. PAUL J. CURRAN, ESQ.  
United States Attorney  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-X

UNITED STATES OF AMERICA, :

:  
-against-

73 Cr. 614 (LWP)

:

GEORGE STOFSKY, CHARLES HOFF, :  
AL GOLD and CLIFFORD LAGEOLES,

:  
Defendants.

-X

AFFIDAVIT IN SUPPORT  
OF MOTION

UNITED STATES OF AMERICA, :

:  
-against-

73 Cr. 616 (LWP)

:

Defendant. :

-X

STATE OF NEW YORK )  
; ss.:  
COUNTY OF NEW YORK )

ELKAN ABRAMOWITZ, being duly sworn, deposes and says:

1. I am a member of the firm of WEISS ROSENTHAL HELLER & SCHWARTZMAN, attorneys for the defendants George Stofsky and Al Gold, and submit this affidavit in support of the motion by defendants Stofsky, Hoff, Gold and Lageoles for an order dismissing Indictment 73 Cr. 614 on the ground that the term of the special grand jury which returned that indictment had expired prior to the date on which the indictment was voted, thus rendering it invalid. In this connection, I have specifically been authorized by defendants Charles Hoff and Clifford Lageoles to represent them for purposes of this motion.

2. Indictments 73 Cr. 614 and 73 Cr. 616 were filed on June 21, 1973. They were voted by a special grand jury which was empanelled pursuant to an order signed by the late Chief Judge Sidney Sugarman of this Court on March 23, 1971 and filed that same day, directing that a special grand jury be empanelled on April 20, 1971. The order was predicated upon an annexed certificate of Daniel P. Hollman, then a Special Attorney appointed under the authority of the Department of Justice, who requested the empanelling of the grand jury. The order, with the annexed certificate and attachment, is submitted herewith as Exhibit "A". The form of the order makes no reference to the authority under which the grand jury was empanelled and was, in all respects, similar to two earlier orders executed by Judge Sugarman upon Mr. Hollman's request--orders executed prior to October 15, 1970, the effective date of 18 U.S.C. §3331--a statute authorizing the empanelling of grand juries whose life can be extended to thirty-six months. These orders are annexed hereto, collectively, as Exhibit "B". Prior to October 15, 1970, the only statutory authority for empanelling grand juries, whether regular or special grand juries, was Federal Rules of Criminal Procedure 6, a rule authorizing the empanelling of grand juries for a term of eighteen months with no provision for extension. See United States v. Fein, 504 F.2d 1170 (2d Cir. 1974). Moreover, inspection of the appropriate court files reveals that the form of order employed by Judge Sugarman directing the empanelling of the April 1971 grand jury was, in all essential respects, the same order employed for the empanelling of all grand juries in the Southern District during this period.

3. The term of the April 1971 special grand jury expired on October 20, 1972. However, an order purporting to extend the term of this grand jury from October 20, 1972 until April 20, 1973 was signed by Chief Judge David Edelstein on October 12, 1972 and was filed on October 16, 1972. That order specifically relied upon Title 18, United States Code, Section 3331(a) as authority for the extension, notwithstanding the fact that the original empanelling order contained no indication that this special grand jury was an "Organized Crime" grand jury empanelled pursuant to 18 U.S.C. §3331. A copy of the extension order of Chief Judge Edelstein is annexed hereto as Exhibit "C".

4. On April 16, 1973, Hon. Morris Lasker, United States District Judge, signed a second order of extension, purporting to extend the life of the April 1971 special grand jury from April 20, 1973 until October 20, 1973. A copy of that order is annexed hereto as Exhibit "D". That order--like the prior extension order--again relied upon Title 18, U.S.C. §3331(a) as authority for the extension. Moreover, the order was not filed until April 23, 1973, three days after the term of the April 1971 grand jury was to have expired, thus raising further doubts about the effectiveness of the second purported order of extension.

5. It was during this second extension, on June 21, 1973, that the instant indictments were filed. It is respectfully submitted that these extensions were invalid and the indictments returned during these extension periods were also invalid under the holding in United States v. Fein, supra.

6. In Fein, the Second Circuit held that purported extensions of special grand juries made pursuant to 18 U.S.C. §3331 were ineffective to extend the life of grand juries unless such grand juries were convened pursuant to the Organized Crime Control Act, and that indictments returned during such extended terms were void. The Court, in Fein, held that a grand jury convened pursuant to Fed. R. Crim. P. 6 could not be extended by virtue of Section 3331, and that such extension were wholly invalid.

7. The empanelling order under which the April 1971 special grand jury was convened was precisely the same form of order used to convene every grand jury in this district during this period. That same order was used long before the effective date of the Organized Crime Control Act, at which time the only authority for empanelling grand juries was Rule 6. Thus, there is no basis for determining that the April 1971 grand jury was empanelled pursuant to the Organized Crime Control Act and that it could therefore be extended by virtue of that Act.

8. Nothing in the recent case of Wax v. Motley, Docket No. 75-3003 (2d Cir. January 21, 1975) is inconsistent with a finding that the April 1971 grand jury was empanelled pursuant to Rule 6 and not 18 U.S.C. §3331. In Wax, the Court refused to dismiss an indictment returned during an extension of the April 1972 grand jury empanelled by order of Chief Judge Edelstein dated March 17, 1972 which made no reference to the statutory authority under which the grand jury was to be empanelled. The Second Circuit held that there was a "patent ambiguity on the face of Chief

Judge Edelstein's original order" (Original Opinion, p.6) and permitted the Court to correct the order nunc pro tunc based upon Chief Judge Edelstein's present recollection as to his intent at the time he signed the original empanelling order. The Court clearly held that it would be inappropriate to permit parol evidence to resolve the ambiguity of the order and specifically stated that the circumstances in Wax involved "a nunc pro tunc amendment to an order..." based upon Chief Judge Edelstein's "present expression of [his] original intention...". The Court went on to say that:

"...the judicial power to correct errors must be sharply restricted and based upon clear recollections excluding any considerations arising after the event". (Original Opinion, p.9)

Since, in Wax, Chief Judge Edelstein submitted an affidavit stating that his intent in March 1972 was to empanel an "Organized Crime" grand jury pursuant to 18 U.S.C. §3331, the Court held that the extensions of the April 1972 grand jury beyond the eighteen-month term were valid. (For the Court's convenience, a copy of the Wax opinion is annexed hereto as Exhibit "E") In the instant case, because Judge Sugarman is dead and no parol evidence would be permitted, under the principles enunciated in Wax, supra, the form of the order used by Judge Sugarman must be read in light of the fact that he used the same form of order for the April 1971 grand jury that he used to empanel Rule 6 grand juries. Consequently, under the principles of Fein, supra, the purported extensions of the April 1971 grand jury were invalid.

9. The United States Attorney has disclosed to defense counsel that Judge Bonsal, in his charge to the April 1971 grand jury, indicated to the jurors in no uncertain terms that they were to be an "Organized Crime" grand jury. (A copy of the minutes of Judge Bonsal's charge to the April 1971 grand jury is annexed hereto as Exhibit "F".) However, it is respectfully submitted that Judge Bonsal's comments to this grand jury cannot be deemed to determine the authority for its existence. It is clear from both Fein and Wax, supra, that the empanelling orders themselves, and not the charges to the grand juries, are the operative documents. Consequently, Judge Bonsal's remarks on April 20, 1971 cannot be read to interpret Judge Sugarman's intent a month earlier and are therefore irrelevant to the proper resolution of this motion. If the ruling in Fein is to have any real significance, it is submitted that the empanelling order must designate the Organized Crime Control Act as authority so that a defendant indicted by such a grand jury can make a clear determination as to the validity of indictments returned during purported extended terms thereof.

10. Thus, it is respectfully submitted that the extensions of the April 1971 special grand jury were invalid, and that the indictment returned during such purported extended terms must be dismissed.

WHEREFORE, it is respectfully requested that the motion to dismiss the indictment be granted in all respects.

Sworn to before me this  
23<sup>rd</sup> day of January, 1975

MICHAEL R. SONBERG  
Notary Public, State of New York  
No. 31-910725  
Qualified in New York County  
Commission Expires March 30, 1976

Elkan Abramowitz

ELKAN ABRAMOWITZ

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



In the Matter

: of

The Empanelling of an Additional :  
Grand Jury for the April, 1971  
Term of Court.

ORDER

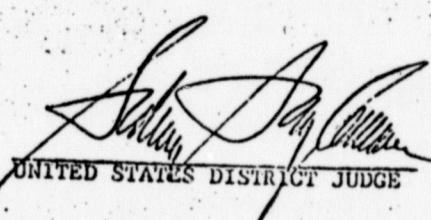
71 Cr Misc. #1  
Page 4

The Special Attorney acting under the authority of  
the Department of Justice, and assigned to the Southern District  
of New York, having duly verified in writing on the ~~21~~<sup>22</sup> day of  
March, 1971, that the exigencies of the public service require  
the empanelling of an additional grand jury for the disposal of  
Government business of the said Southern District of New York,  
it is hereby

ORDERED, that the Clerk or any authorized Deputy  
Clerk of this Court, publicly draw one hundred and fifty (150)  
additional jurors to report on the ~~20~~<sup>21</sup> day of April, 1971, and  
that from among said jurors there shall be empanelled an addi-  
tional Grand Jury to serve from said April ~~20~~<sup>21</sup>, 1971, at said  
Court. Such jurors shall be drawn from the Qualified Jury Wheel  
containing the names of the persons to serve as jurors in this  
Court, which shall have been placed therein by the Clerk, or  
Deputy Clerk for Juries. The Clerk or Deputy Clerk for Juries  
immediately after said drawing shall file in the Clerk's Office  
a list certified by him of the names and residences of the jurors  
so drawn. The said jurors shall be summoned to attend Court on  
the ~~20~~<sup>21</sup> day of April, 1971, at 9:30 o'clock in the forenoon.

Dated: New York, New York  
March, 1971

MAR 23 1971

  
UNITED STATES DISTRICT JUDGE

DPH:jun

MICROFILM  
MAR 23 1971

EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

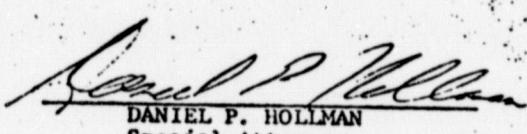
CERTIFICATE

The Empanelling of an Additional  
Grand Jury for the April, 1971  
Term of Court

I, DANIEL P. HOLLMAN, having hereby been specially  
retained and appointed as a Special Attorney under the author-  
ity of the Department of Justice, and having been assigned to  
the Southern District of New York, as set forth more specifically  
in the attachment hereto.

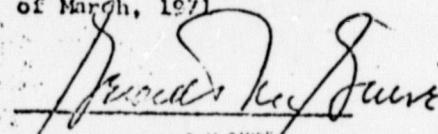
DO HEREBY CERTIFY that the volume of work in  
criminal cases is such that the exigencies of the public service  
require an additional Grand Jury to be empanelled on the 20<sup>th</sup>  
day of April, 1971, at the United States District Court for the  
Southern District of New York

Dated: New York, New York  
March 22, 1971

  
DANIEL P. HOLLMAN

Special Attorney  
Southern District of New York

SS: New York, New York  
Sworn to this 22<sup>nd</sup> day  
of March, 1971

  
EDWARD T. MCGUIRE  
Notary Public, State of New York  
Cir. No. 74-1951425, Qual. in Bronx Co.  
Commission Expires March 30, 1970

OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

July 2, 1969

Mr. Daniel P. Hollman  
Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Hollman:

As an attorney and counselor at law, you are hereby specially retained and appointed as a Special Attorney under the authority of the Department of Justice, to assist in the trial of the case or cases growing out of the transactions hereinafter mentioned in which the Government is interested; and in that connection you are specifically directed to file informations and to conduct in the Southern District of New York and in any other judicial district where the jurisdiction thereof lies any kind of legal proceeding, civil or criminal including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized by law to conduct.

The Department is informed that various persons, companies, corporations, firms, associations and organizations to the Department unknown, have violated in the Southern District of New York and in other judicial districts the laws relating to extortion in aid of racketeering (18 U.S.C. 1951), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), perjury (18 U.S.C. 1621), mail fraud (18 U.S.C. 1341), fraud by wire (18 U.S.C. 1343), interstate transportation of stolen property (18 U.S.C. 2314), wire and radio communication (47 U.S.C. 203 and 501), internal revenue (26 U.S.C. 7201-7206), and other criminal laws of the United States and have conspired to commit all such offenses in violation of Section 371 of Title 18 of the United States Code.

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division, Department of Justice.

Sincerely,

*Richard G. Kleindienst*

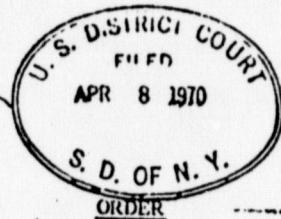
Richard G. Kleindienst  
Deputy Attorney General

"A"

ppm:jem

A 101

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



In the Matter  
of

The Empanelling of an Additional  
Grand Jury for the April, 1970  
Term of Court

CR-70-Mac 1 Page 3

The Special Attorney acting under the authority of the Department of Justice, and assigned to the Southern District of New York, having duly verified in writing on the 8th day of April, 1970, that the exigencies of the public service require the empanelling of an additional grand jury for the disposal of Government business of the said Southern District of New York, it is hereby:

ORDERED, that the Clerk or any authorized Deputy Clerk of this Court, publicly draw one hundred and twenty-five (125) additional jurors to report on the 30th day of April, 1970, and that from among said jurors there shall be empanelled an additional Grand Jury to serve from said April 30, 1970, at said Court. Such jurors shall be drawn from the Qualified Jury Wheel containing the names of the persons to serve as jurors in this Court, which shall have been placed therein by the Clerk, or Deputy Clerk for Juries. The Clerk or Deputy Clerk for Juries immediately after said drawing shall file in the Clerk's Office a list certified by him of the names and residences of the jurors so drawn. The said jurors shall be summoned to attend Court in the 30th day of April, 1970, at 9:30 o'clock in the forenoon.

APR  
8  
1970

MICROFILM  
Dated: New York, New York  
April 8, 1970

U. S. D. J.

EXHIBIT "B"

DPH:jem

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

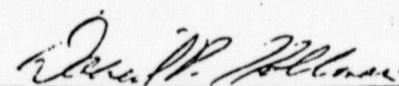
-----x  
In the Matter :  
of : CERTIFICATE

The Empanelling of an Additional :  
Grand Jury for the April, 1970, :  
Term of Court :  
-----x

I, DANIEL P. HOLLMAN, having hereby been specially  
retained and appointed as a Special Attorney under the  
authority of the Department of Justice, and having been  
assigned to the Southern District of New York, as set forth  
more specifically in the attachment hereto,

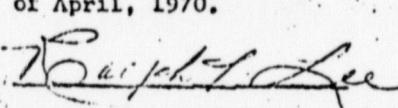
DO HEREBY CERTIFY that the volume of work in  
criminal cases is such that the exigencies of the public  
service require an additional Grand Jury to be empanelled  
on the 30th day of April, 1970, at the United States District  
Court for the Southern District of New York.

Dated: New York, New York  
April 8th, 1970.

  
DANIEL P. HOLLMAN

Special Attorney  
Southern District of New York

SS: New York, New York  
Sworn to this 8th day  
of April, 1970.

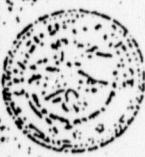
  
RALPH L. LEE

Notary Public, State of New York  
No. 71-227045 - Queens County  
Examining March 20, 1971

"B"

OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

July 2, 1969



Mr. Daniel P. Hollman  
Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Hollman:

As an attorney and counselor at law, you are hereby specially retained and appointed as a Special Attorney under the authority of the Department of Justice, to assist in the trial of the case or cases growing out of the transactions hereinafter mentioned in which the Government is interested; and in that connection you are specifically directed to file informations and to conduct in the Southern District of New York and in any other judicial district where the jurisdiction thereof lies any kind of legal proceeding, civil or criminal including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized by law to conduct.

The Department is informed that various persons, companies, corporations, firms, associations and organizations to the Department unknown, have violated in the Southern District of New York and in other judicial districts the laws relating to extortion in aid of racketeering (18 U.S.C. 1951), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), perjury (18 U.S.C. 1621), mail fraud (18 U.S.C. 1341), fraud by wire (18 U.S.C. 1343), interstate transportation of stolen property (18 U.S.C. 2314), wire and radio communication (47 U.S.C. 203 and 501), internal revenue (26 U.S.C. 7201-7206), and other criminal laws of the United States and have conspired to commit all such offenses in violation of Section 371 of Title 18 of the United States Code.

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division, Department of Justice.

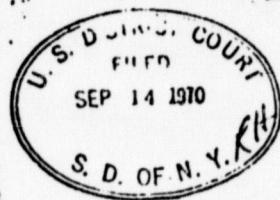
Sincerely,

*Richard G. Kleindienst*

Richard G. Kleindienst  
Deputy Attorney General

"b"

A-104  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



In the Matter :  
of :  
The Empanelling of an Additional :  
Grand Jury for the October, 1970 :  
Term of Court. :  
-----X-----

ORDER

70 Cr Misc #1  
(Page 9 )

The Special Attorney acting under the authority of  
the Department of Justice, and assigned to the Southern District  
of New York, having duly verified in writing on the 14<sup>th</sup> day of  
September, 1970, that the exigencies of the public service re-  
quire the empanelling of an additional grand jury for the  
disposal of Government business of the said Southern District  
of New York; it is hereby

ORDERED, that the Clerk or any authorized Deputy  
Clerk of this Court, publicly draw one hundred and ~~one~~ <sup>fifty</sup>  
150 (150) additional jurors to report on the 13<sup>th</sup> day of October,  
1970, and that from among said jurors there shall be empanelled  
an additional Grand Jury to serve from said October 13<sup>th</sup>, 1970,  
at said Court. Such jurors shall be drawn from the Qualified  
Jury Wheel containing the names of the persons to serve as  
jurors in this Court, which shall have been placed therein by  
the Clerk, or Deputy Clerk for Juries. The Clerk or Deputy  
Clerk for Juries immediately after said drawing shall file in  
the Clerk's Office a list certified by him of the names and  
residences of the jurors so drawn. The said jurors shall be  
summoned to attend Court on the 13<sup>th</sup> day of October, 1970, at  
9:30 o'clock in the forenoon.

Dated: 14<sup>th</sup> New York, New York  
September, 1970

Arthur J. Tumman  
Clerk of the Court

MICROFILM  
SEP 11 1970  
DPH:pc

EXHIBIT "B"

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

--X

In the Matter

of

CERTIFICATE

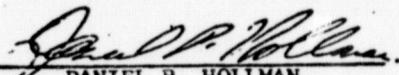
The Empanelling of an Additional  
Grand Jury for the October, 1970  
Term of Court

--X

I, DANIEL P. HOLLMAN, having hereby been specially retained and appointed as a Special Attorney under the authority of the Department of Justice, and having been assigned to the Southern District of New York, as set forth more specifically in the attachment hereto,

DO HEREBY CERTIFY that the volume of work in criminal cases is such that the exigencies of the public service require an additional Grand Jury to be empanelled on the 13<sup>th</sup> day of October, 1970, at the United States District Court for the Southern District of New York.

Dated: New York, New York  
September 14, 1970



DANIEL P. HOLLMAN  
Special Attorney  
Southern District of New York

SS: New York, New York  
Sworn to this 14<sup>th</sup> day  
of September, 1970

  
PATRICK J. PHILBIN  
NOTARY PUBLIC STATE OF NEW YORK  
NO. N-235630 Certified in Queens County  
Commissioned SEPTEMBER THIRTEEN, 1970.

'B'



OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

July 2, 1969

Mr. Daniel P. Hollman  
Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Hollman:

As an attorney and counselor at law, you are hereby specially retained and appointed as a Special Attorney under the authority of the Department of Justice, to assist in the trial of the case or cases growing out of the transactions hereinafter mentioned in which the Government is interested; and in that connection you are specifically directed to file informations and to conduct in the Southern District of New York and in any other judicial district where the jurisdiction thereof lies any kind of legal proceeding, civil or criminal including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized by law to conduct.

The Department is informed that various persons, companies, corporations, firms, associations and organizations to the Department unknown, have violated in the Southern District of New York and in other judicial districts the laws relating to extortion in aid of racketeering (18 U.S.C. 1951), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), perjury (18 U.S.C. 1621), mail fraud (18 U.S.C. 1341), fraud by wire (18 U.S.C. 1343), interstate transportation of stolen property (18 U.S.C. 2314), wire and radio communication (47 U.S.C. 203 and 501), internal revenue (26 U.S.C. 7201-7206), and other criminal laws of the United States and have conspired to commit all such offenses in violation of Section 371 of Title 18 of the United States Code.

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division, Department of Justice.

Sincerely,

A handwritten signature in ink, appearing to read "Richard G. Kleindienst".

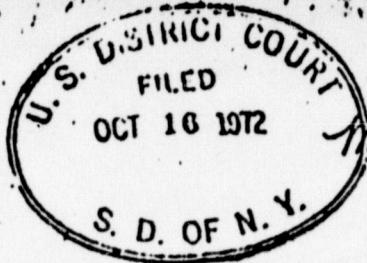
Richard G. Kleindienst  
Deputy Attorney General

"B"



A 108

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



In the Matter

of

CERTIFICATE

The extension of the term  
of the Special Grand Jury  
empanelled on April 20, 1971  
from October 20, 1971 to  
April 20, 1973.

72 Cr Trial #1 - Page 32

I, WHITNEY NORTH SEYMOUR, JR., United States  
Attorney for the Southern District of New York,

DO HEREBY CERTIFY that the business of the Special  
Grand Jury empanelled on April 20, 1971 has not been completed,  
and that the volume of work in criminal cases is such that the  
exigencies of the public service require that the term of the  
Special Grand Jury empanelled on April 20, 1971 be extended  
for a period of six months from October 20, 1972 to April 20,  
1973.

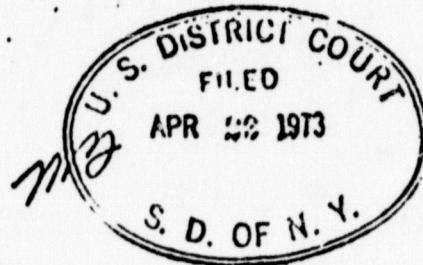
Dated: New York, New York

September 21, 1972

Whitney North Seymour, Jr.  
WHITNEY NORTH SEYMOUR, JR.  
United States Attorney for the  
Southern District of New York

MICROFILM  
OCT 16 1972

A 109  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



In the Matter :  
of :  
The extension of the term of :  
the Special Grand Jury :  
empanelled on April 20, 1971 :  
from April 20, 1973 to :  
October 20, 1973. :  
-----x

ORDER

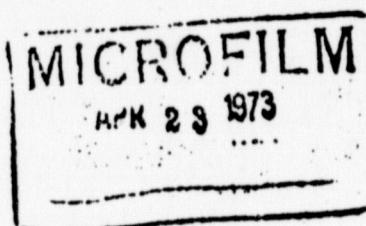
73 cr Musel #1  
Page 16

The United States Attorney for the Southern District of New York, having duly verified in writing on the 16 of April, 1973, that the business of the Special Grand Jury empanelled on April 20, 1971 for the inquiry into offenses against the criminal laws of the United States alleged to have been committed within the said Southern District of New York has not been completed, it is hereby

ORDERED, that, pursuant to Section 3331(a) of Title 18, United States Code, the term of said Special Grand Jury is extended for a period of six months from April 20, 1973 until October 20, 1973.

Dated: New York, New York

April 16, 1973



Maurice H. LeBeau  
UNITED STATES DISTRICT JUDGE

JWD:feh

A 110

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

CERTIFICATE

The extension of the Term of the  
Special Grand Jury empanelled on :  
April 20, 1971 from April 20, 1973 to  
October 20, 1973. :

I, WHITNEY NORTH SEYMOUR, JR., United States  
Attorney for the Southern District of New York,

DO HEREBY CERTIFY that the business of the Special  
Grand Jury empanelled on April 20, 1971 has not been completed,  
and that the volume of work in criminal cases is such that  
the exigencies of the public service require that the term of  
the Special Grand Jury empanelled on April 20, 1971 be extended  
for a period of six months from April 20, 1973 to October 20,  
1973.

Dated: New York, New York

April 16, 1973

*Whitney North Seymour, Jr.*  
WHITNEY NORTH SEYMOUR, JR.  
United States Attorney for the  
Southern District of New York

A 111

\* \* \*

(Remarks by Hon. Dudley B. Bonsal on the convening  
of a special grand jury on April 20, 1971.)

Mr. Foreman, Madam Deputy Forelady and ladies and gentlemen of the grand jury:

You twenty-three ladies and gentlemen have just been empaneled and sworn as a special grand jury. It is rather an historical event, ladies and gentlemen, because you are the first grand jury to have been empaneled under an act of Congress known as the Organized Crime Control Act of 1970, the first time we have had one here.

As the name suggests, your duties will be in connection with the investigation of organized crime in this District.

I believe you have been advised by Mr. Holman that you will serve for a period of eighteen months, unless the Court discharges you before that time, following a determination by a majority vote of yourselves that your business has been completed; and if the Court should determine that there is more business for you to do, your term of service may be extended by periods of six months, but in no event will your term of service exceed thirty-six months.

And, of course, you will not sit continually. As I understand it, you will probably sit in the afternoons, when called into session. It will not be a continuous thing,

and it should not interfere with your normal duties, except to the extent required to undertake this very important public duty, and I want to say at the outset that I am very grateful to all of you for serving on this grand jury and for the sacrifices that I know each of you has had to make in your own personal lives so you could serve in this very important public capacity. And if at the end of your term you don't think you have completed the work that you have embarked upon, you may apply to the Chief Judge of the Circuit for an order to continue your term; but, if you do this, in any event your term will not exceed thirty-six months.

Now, you are a grand jury in the Southern District of New York, and our District takes in part of New York City, the Counties of New York and the Bronx, and then runs northward through Westchester County and then along both sides of the Hudson River, taking in the counties -- I believe there are eleven of them -- up to the southern line of Albany County and Rensselaer County.

I note that none of you has ever served on a grand jury before, and so I will be grateful if you would give me your careful attention to the instructions which I will now give you as to your duties and your powers as grand jurors.

Ladies and gentlemen, the grand jury is a basic institution in the administration of justice under our

2 constitutional form of government. It dates back to the  
3 beginning of this republic, and we inherited the grand jury  
4 from England, where the institution of the grand jury goes  
5 back to the Thirteenth Century.

6 And through these centuries the purpose of the  
7 grand jury has been two-fold:

8 In the first place, the grand jury is charged with  
9 investigating alleged crime in the district in which it oper-  
10 ates, and with you it's the investigation of what Congress  
11 terms organized crime.

12 It is the purpose of this grand jury to investigate  
13 organized crime in the Southern District of New York and,  
14 where the evidence of crime warrants, to charge those whom  
15 you think to be responsible for the crime by means of an  
16 indictment, which is handed up to the Court.

17 Your second function, which is just important as the  
18 first one, is to protect the citizens of our district, the  
19 Southern District of New York, against unfounded accusations,  
20 whether they are made by public officials or by private  
21 citizens.

22 In this way, ladies and gentlemen, it has been said  
23 that the grand jury breathes the spirit of the community into  
24 the enforcement of the law.

25 You ladies and gentlemen have been selected as

A 115

2 representative citizens of our district, to carry out this  
3 very important task, and it is citizens like you who have  
4 served their communities in this way through the centuries.

5 I have appointed one of your number to act as your  
6 foreman and another to act as deputy forelady. Both the  
7 foreman and the deputy forelady are authorized by law to  
8 administer the oath to witnesses, and when you repair to the  
9 grand jury room, I will ask you, Mr. Foreman, to appoint from  
10 your number a secretary, who will maintain a record of the  
11 number of jurors present at each meeting and will also keep a  
12 record of the number of jurors concurring in each indictment  
13 which may be filed by your grand jury.

14 Now, your duties are spelled out in the solemn oath  
15 which each of you has just taken, and it is substantially the  
16 same oath that grand jurors have taken through the centuries.  
17 Each of you has sworn that as grand jurors you will diligently  
18 inquire into and investigate all reports of crime committed  
19 against the United States within this district, the Southern  
20 District of New York. Each of you has sworn that you will in-  
21 dict no one from envy, hatred or malice and that you will not  
22 fail to indict someone by reason of fear, favoritism or hope  
23 of reward.

24 In other words, ladies and gentlemen, you will dis-  
25 charge your duties faithfully, fearlessly and without any

2 prejudice of any kind. A 118

3 In carrying out your responsibility, you will hear  
4 the testimony of witnesses and see such documentary evidence  
5 as may be produced, and if you find that there is probably  
6 cause -- and I repeat those words -- if you find that there  
7 is probable cause to believe that a crime has been committed,  
8 you will return against those whom you believe committed  
9 it an indictment. Sometimes an indictment is referred to as  
10 a true bill. An indictment, or a true bill, is a written  
11 accusation -- and you saw me receive seven of them just now.  
12 It is a written accusation or charge, founded on your conclu-  
13 sion that a crime has been committed and that there is probabl  
14 cause to believe that the person or persons accused committed  
15 the offense.

16 You are not, of course, passing on whether the ac-  
17 cused may be guilty or innocent of the crime, and, as you  
18 know, under the law everyone is deemed innocent until he  
19 either pleads guilty or is convicted at a trial, and he has a  
20 right to a trial by a jury. That is a trial jury or a petit  
21 jury as distinguished from you ladies and gentlemen, who are  
22 a grand jury. And it is the trial jury which determines whe-  
23 ther the accused is innocent or whether he is guilty.  
24 What the grand jury does is to determine probable cause, to  
25 determine whether the accused should be brought to trial, and

1 MP

2 you have no concern in what follows thereafter or any ultimate  
3 result.

4 Now, the United States Attorney in this District  
5 is Mr. Whitney North Seymour, and matters may be presented  
6 to you by Mr. Seymour or by one of his assistants, and I  
7 expect that at least during the early part of your term that  
8 Mr. Holman and Mr. Keegan, who are assistant United States  
9 Attorneys, will be representing Mr. Seymour. But other  
10 assistant United States Attorneys or representatives of the  
11 Department of Justice or Mr. Seymour himself may well appear  
12 before you, and the Court may also bring matters to your at-  
13 tention directly.

14 Now, ladies and gentlemen, in considering the evi-  
15 dence presented to you, you must remember that you are usual-  
16 ly hearing only one side, that is, the evidence presented by  
17 the Government through the United States Attorney or his as-  
18 sistant. Usually, the accused does not appear before you, nor  
19 does he introduce evidence nor does he cross-examine the  
20 Government's witnesses. There are exceptions to this, and you  
21 may find in the course of your duties that an accused person  
22 may appear, or there may be other occasions when you wish to  
23 hear from him..

24 So under these circumstances, ladies and gentlemen,  
25 it is equally your duty to protect the innocent from false

2 accusations and to protect the community from the law breaker,  
3 and I am sure you will agree that false accusations can do  
4 irreparable damage to an individual even though he later  
5 proves their falsity.

6 In carrying out your duties, please do not be in-  
7 fluenced by anything other than the evidence which has been  
8 presented to you in the grand jury room. Ignore what the news-  
9 papers say. Stand steadfast against public clamor, and just  
10 as you do not seek public favor, perform your duties swiftly,  
11 in accordance with the oath that each of you has taken.

12 Now, during your inquiries the United States Attorne  
13 or an assistant will be present and will question witnesses,  
14 and after he has concluded his questioning, the foreman or any  
15 other juror may, if he wishes, ask the witness additional  
16 questions. I mention to you that it helps a great deal under  
17 these circumstances if you would route your questions through  
18 the foreman. It makes it a little quicker, a little more  
19 sensible and prevents the proceedings from turning into a  
20 general discussion. So if any jurors have questions, please  
21 route them through the foreman.

22 During the course of the questioning there may be  
23 a stenographer present, and sometimes, if the witness has  
24 difficulty with the English language, there may be an inter-  
25 preter to translate. But when your inquire has been concluded

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2 and you commence your deliberations there will be no one pre-  
3 sent except you, the ladies and gentlemen of the grand jury,  
4 and during this period of deliberation you will carefully  
5 consider the testimony which has been presented to you, and  
6 if you find no probable cause that the person with respect to  
7 whom the charge is advanced committed a crime, you will return  
8 no indictment, no true bill.

9           But on the other hand, if after careful considera-  
10 tion you find that the evidence does show probable cause, then  
11 of course it is your duty to return an indictment against  
12 the person whose case is before you.

13           Now, there are twenty-three of you here on this  
14 grand jury, and at each of your sessions there must be at  
15 least sixteen of you present to constitute a quorum. Moreover  
16 the affirmative vote of at least twelve of you is required  
17 before you can vote an indictment; and in cases where you do  
18 vote an indictment, it will be handed up to the Court by your  
19 foreman or your deputy forelady, just the way you saw me re-  
20 ceiving indictments from this grand jury that was here a few  
21 minutes ago.

22           Now, under the statute pursuant to which you were  
23 empaneled, you have additional powers not normally conferred  
24 on grand juries. Upon the completion of your term, whether  
25 it be the original eighteen months or whether it is sooner

2 terminated or however it is extended -- upon the completion of  
3 the term you have the right to make a report to the Court  
4 based upon what you have found out during your labors in the  
5 grand jury, and these reports are of two kinds. The first  
6 kind -- and I am reversing the statute for this purpose --  
7 the most obvious type of report is the report regarding organ-  
8 ized criminal convictions, organized crime as you find it in  
9 our district. That is for the help of the Court, the help  
10 of the community, and it helps everybody else. But the  
11 statute does provide that if you furnish the Court with such  
12 a report, you must not be critical of any particular individ-  
13 ual. In other words, you report on the conditions you find.  
14 You are not making accusations or being critical of any  
15 particular individual.

16 Now, the second type of report concerns, if you  
17 find it -- concerns non-criminal misconduct, malfeasance or  
18 misfeasance in office involving organized criminal activity  
19 by any officer or employee of the State or Federal Government  
20 or the City of New York, and if you find in the course of your  
21 deliberations that such non-criminal misconduct on the part  
22 of any of these employees has an effect on organized crime,  
23 you may furnish a report on that, provided you first afford  
24 that public officer or employee an opportunity to appear  
25 before you and to explain his conduct and to bring witnesses

2 A 121  
3 who may testify on his own behalf; and if you make such a  
4 report regarding a public officer or employee, in fairness  
5 the Court may decide to seal the report in the first instance,  
6 or the Court may send it back to you and ask you if you would  
consider further testimony or witnesses.

7 Now, as I mentioned to you, the United States Attorney  
8 and his assistants and possibly special attorneys from the  
9 Department of Justice will appear before you and will answer  
10 any questions that you may have regarding the matters as to  
11 which I have touched upon, but your primary duty is to investi-  
12 gate alleged Federal criminal violations and to return indict-  
13 ments where you find probable cause, and these other powers,  
14 and particular the reporting, only come into play after you  
15 have completed these primary duties.

16 And finally, ladies and gentlemen, I would like to  
17 stress to you the importance of absolute secrecy in all  
18 your activities and deliberations. You have taken an oath of  
19 secrecy, and there are a number of reasons for that. It is  
20 necessary to prevent the escape of people whose indictment may  
21 be contemplated by you. It is necessary to insure the utmost  
22 freedom for you in your deliberations and prevent you from  
23 being importuned or influenced by anyone subject to possible  
24 indictment or by their friends. It is necessary to prevent  
25 tampering with the witnesses who may testify before you and

2 later appear before trials of those people whom you may in-  
3 dict. It is necessary to encourage free and complete dis-  
4 closure by people who have information with respect to organ-  
5 ized crime; and, finally and very importantly, it is neces-  
6 sary to protect an innocent person who has been accused and  
7 is exonerated by you from disclosure of the fact that he has  
8 been under investigation.

9 Now, this duty of secrecy means that you will not  
10 reveal anything that happens in the jury room to your family,  
11 your children, your friends or anyone else except the other  
12 ladies and gentlemen who are participating in this grand jury  
13 room with you. It is nobody else's business what goes on in  
14 the grand jury room, and it would be most unfortunate if dis-  
15 closure were made, no matter how innocent, not only for the  
16 administration of justice but the protection of innocent per-  
17 sons, who should not be charged except under the proper pro-  
18 cesses of the law.

19 I repeat, ladies and gentlemen, that you are perform-  
20 ing a very great public service here in serving as the first  
21 special grand jury under this statute, and I know that you  
22 will perform your duties fairly, impartially and without fear  
23 or prejudice, in keeping with the great traditions of the grand  
24 jury.

25 During your term, there will be a judge sitting in

2 part who will always be available to you to render any  
3 assistance possible.

4 All right, ladies and gentlemen; you may now pro-  
5 ceed -- Where do the ladies and gentlemen proceed?

6 THE CLERK: Your Honor, they go to Room 1403, which  
7 is kind of involved. You take the elevator back to the tenth  
8 floor and then change over to the next elevator bank, which  
9 will take you to the fourteenth floor, and you will go to  
10 Room 1403.

11 THE COURT: Room 1403.

12 Thank you very much, ladies and gentlemen, and I  
13 am very glad to see all of you.

14 THE CLERK: Thank you very much, your Honor.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :  
:  
-against- : 73 Cr. 614 (LWP)

:  
GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES, :

Defendants. :  
-----X

UNITED STATES OF AMERICA, :  
:  
-against- :  
:

KARL "JACK" SCHWARTZBAUM, : 73 Cr. 616 (LWP)

Defendant.  
-----X

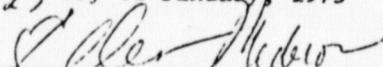
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

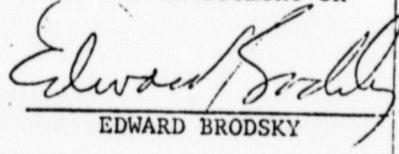
EDWARD BRODSKY, being duly sworn, deposes and says:

1. I am a member of the firm of GOLDSTEIN, SHAMES & HYDE,  
attorneys for defendant Karl "Jack" Schwartzbaum in the above-  
captioned prosecution.

2. I have read the affidavit of ELKAN ABRAMOWITZ, sworn to  
the 23rd day of January, 1975. Since the operative facts contained  
in Mr. Abramowitz' affidavit are equally applicable to defendant  
Schwartzbaum, I join in his motion to dismiss the indictment on  
the grounds stated in his affidavit.

Sworn to before me this  
23 day of January, 1975



  
EDWARD BRODSKY

ELLEN MEDEROS  
Notary Public, State of New York  
No. 31-7890535  
Qualified in New York County  
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :  
- against - : AFFIDAVIT OF JOHN C.  
GEORGE STOFSKY, CHARLES HOFF, : SABETTA IN OPPOSITION  
AL GOLD and CLIFFORD LAGEOLES, : 73 Cr. 614 (LWP)  
Defendants. :  
-----x

UNITED STATES OF AMERICA, :  
- against - : 73 Cr. 616 (LWP)  
KARL "JACK" SCHWARTZBAUM, :  
Defendant. :  
-----x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN C. SABETTA, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I served as the government's trial counsel in United States v. George Stofsky, et al., 73 Cr. 614, and as the government's assistant trial counsel in United States v. Karl "Jack" Schwartzbaum, 73 Cr. 616. I make this affidavit in opposition to the motion of defendants in those actions for an order dismissing the respective indictments therein on the ground that the grand jury which returned those indictments had expired before the indictments were voted.

A 126

2. Superseding Indictments 73 Cr. 614 and 73 Cr. 616 were filed on June 21, 1973. The Grand Jury which returned those indictments had been empanelled on April 20, 1971 pursuant to an order dated March 23, 1971 and signed by the late Honorable Sidney Sugarman, Chief District Judge, Southern District of New York. That order was premised on a certificate of Daniel P. Hollman, a Special Attorney of the Department of Justice and then Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime, reciting the need for such an additional Grand Jury. The term of the Grand Jury was thereafter twice extended, and during the second such extension the indictments herein were returned.

3. The chronology and terms of the original empanelling order and the extension orders pertinent to the April 20, 1971 Grand Jury are accurately set forth in paragraphs 2-4 of the Affidavit of Elkan Abramowitz, sworn to January 23, 1975 and filed herein.

4. I have been advised by William Aronwald, Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime ("Strike Force") that to his knowledge it has been the practice of the Strike Force, since the enactment of Title 18, United States Code, Sections 3331-34, to make full use of those provisions; and that, accordingly, since October 15, 1970 the Strike Force has sought to have empanelled only Organized Crime Special Grand Juries.

5. Inspection of the appropriate files of this Court reveals that the first Strike Force request for the empanelling of a grand jury, tendered subsequent to the October 15, 1970 enactment of the Organized Crime Control Act of 1970, was that which resulted in the empanelling of the April 20, 1971 Grand Jury at issue here.

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6. Further inspection of the appropriate files of this Court reveals that subsequent to the empanelling of the April 20, 1971 Grand Jury, the United States District Court for the Southern District of New York next empanelled an Organized Crime Special Grand Jury on April 18, 1972. It is that grand jury which is the subject of Wax v. Motley, Docket No. 75-3003 (2d Cir. Jan. 21, 1975).

JOHN C. SABETTA  
Assistant United States Attorney

Sworn to before me this  
13th day of February, 1975.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

- v -

: 73 Cr. 614

GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD, and CLIFFORD LAGEOLES, :

Defendants. :

-----x  
UNITED STATES OF AMERICA :

- v -

KARL "JACK" SCHWARTZBAUM, : 73 Cr. 616

Defendant. :

-----x  
ENDORSEMENT ORDER

The motion herein is denied. Having considered the circumstances surrounding the signing of the order empanelling the grand jury for April 20, 1971 the Court is persuaded that the order was meant to be premised on 18 U.S.C. §3331. Judge Bonsal's statement to the grand jury when it convened makes this abundantly clear. Defendants' reading of Wax v. Motley, Slip Op. Docket No. 75-3003 (2d Cir. January 21, 1975) is erroneous. That case did not hold that the use of extrinsic evidence to clarify a court order is improper. In fact, in Wax, such extrinsic evidence was used to shed light on an otherwise ambiguous order.

It is true that Vax, unlike this case, involved a nunc pro tunc amendment to an order. However, given Judge Bonsal's statement to the grand jury so shortly after the empanelling order was signed such a distinction is of no importance. It is reasonable to assume that Judge Bonsal before making his remarks undertook to ascertain the factual basis for his assertions.

The argument that the entry of Judge Lasker's order of extension three days after the expiration of the grand jury of itself renders the indictments invalid the Court finds without merit. See Nolan v. United States, 163 F.2d 768 (8th Cir. 1947). Section 3331(a) of Title 18 provides that the "Court may enter an order extending" the term of a special grand jury for an additional six months. The statute does not provide that it is the actual act of entering the order on the criminal docket which triggers the extension and it would be fair to assume that it was presupposed by the drafters of the section that prior to such entry a judge's signature was required. In light of the fact that judges normally have no control over the entry of orders and that in fact this is a ministerial task performed by the clerks of the court, it would appear that

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the critical act signifying approval of the extension is  
that of signing the order.

The motion is in all respect denied.

SO ORDERED.

Dated: New York, New York  
June 4, 1975

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LAWRENCE W. PIERCE  
U. S. D. J.

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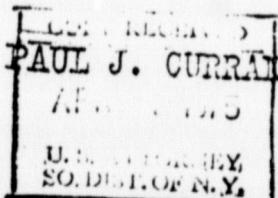
MOTION TO DISMISS THE INDICTMENT ON  
THE GROUND OF THE PRESENCE OF AN UN-  
AUTHORIZED PERSON IN THE GRAND JURY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*U.S. District Court  
4/21/75  
Apr 21, 1975  
SD of N.Y.*

UNITED STATES OF AMERICA,	:	<u>NOTICE OF MOTION</u>
-against -		
GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,	:	73 Cr. 614 (LWP)
Defendants.		
UNITED STATES OF AMERICA,	:	
-against-		73 Cr. 616 (LWP)
KARL "JACK" SCHWARTZBAUM,	:	
Defendant.		

PLEASE TAKE NOTICE that, upon the annexed affidavit of ELKAN ABRAMOWITZ, ESQ., defendants Stofsky, Gold and Schwartzbaum will move this Court, Hon. Lawrence W. Pierce, U.S.D.J., at a time and place to be fixed by the Court, for an order dismissing the indictments herein on the ground that the prosecutor who presented the case to the grand jury was not properly authorized to represent the United States and to appear before the grand jury and for such other, different and further relief as to the Court may appear just and proper.



A 133

Dated: New York, New York

March 24, 1975

WEISS ROSENTHAL HELLER & SCHWARTZMAN

By: \_\_\_\_\_

A Member of the Firm

295 Madison Avenue  
New York, New York 10017  
(212) 725-9200

and

ROONEY & EVANS

By: \_\_\_\_\_

A Member of the Firm

521 Fifth Avenue  
New York, New York 10017  
(212) 682-4343

Co-Counsel for Defendants  
Stofsky and Gold

GOLDSTEIN, SHAMES & HYDE

By: \_\_\_\_\_

A Member of the Firm

655 Madison Avenue  
New York, New York 10021  
(212) 838-3700

Attorneys for Defendant  
Karl "Jack" Schwartzbaum

TO:

HON. PAUL J. CURRAN  
United States Attorney for  
the Southern District of  
New York  
United States Courthouse  
Foley Square  
New York, New York 10007

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----:  
UNITED STATES OF AMERICA, :  
-against- : AFFIDAVIT  
GEORGE STOFSKY, CHARLES HOFF, : 73 Cr. 614 (LWP)  
AL GOLD and CLIFFORD LAGEOLES, :  
Defendants. :  
-----:  
UNITED STATES OF AMERICA, :  
-against- : 73 Cr. 616 (LWP)  
KARL "JACK" SCHWARTZBAUM, :  
Defendant. :  
-----:  
STATE OF NEW YORK } ss.:  
COUNTY OF NEW YORK}

ELKAN ABRAMOWITZ, ESQ., being duly sworn, deposes and says:

1. I am one of the attorneys for defendants Stofsky and Gold in the above-entitled action and submit this affidavit in support of the within motion to dismiss Indictments Nos. 614 and 616 on the ground that the special prosecutor who presented the case to the grand jury was not properly authorized to do so.
2. By letter of February 19, 1975, I requested that the Assistant United States Attorney presently handling the instant

prosecutions provide me with a copy of the letter purporting to authorize the Strike Force attorney to represent the United States in connection with the grand jury proceedings involved herein. On March 4, 1975, A.U.S.A. John C. Sabetta sent me a copy of that letter, a copy of which is annexed hereto as Exhibit A. Also annexed as Exhibits B and C are copies of Mr. Sabetta's letters stating that it was Mr. Hinckley [Gerard J. Hinckley, Special Attorney, Department of Justice], alone, who presented to the grand jury the matters which resulted in the return and filing of Indictments 73 Cr. 614 and 616. Defendants contend that Mr. Hinckley lacked proper authority to present this case to the grand jury, and that the indictments are therefore void.

3. The legal basis for the instant motion is discussed in the Memorandum of Law submitted herewith. It is premised upon the holding in United States v. Crispino, 74 Cr. 932 (Werker, J.) that a letter similar to the one in this case did not meet the requirements of 28 U.S.C. §515 for the appointment of special prosecutors. As noted in the Memorandum of Law, the only difference between the Crispino letter and the one here is the inclusion in the letter to Mr. Hinckley of a list of statutes. But, since the letter to Mr. Hinckley also purported to cover additional unspecified "criminal laws of the United States," its scope of authority was, in effect, as broad as that covered by the Crispino letter which has been held insufficient. Simply stated,

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defendants contend that the letter to Mr. Hinckley lacked the specificity contemplated and required by Section 515 and that Mr. Hinckley, therefore, lacked authority to present the instant case to the grand jury.

WHEREFORE, it is respectfully submitted that the above-entitled indictments should be dismissed and that the Court should grant such other, different and further relief as may be just and proper.

/S/

---

ELKAN ABRAMOWITZ

Sworn to before me this  
31<sup>st</sup> day of March 1975.

MICHAEL R. COHEN  
Notary Public, State of New York  
No. 31240  
Qualified in New York County  
Commission Expires March 30, 1976



A 137

OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

January 7, 1972

1/1  
M 10- C158

Mr. Gerard J. Hinckley  
Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Hinckley:

As an attorney and counselor at law you are hereby specially retained and appointed as a Special Attorney under the authority of the Department of Justice to assist in the trial of the case or cases growing out of the transactions hereinafter mentioned in which the Government is interested. In that connection you are specifically directed to file informations and to conduct in the Southern District of New York and in any other judicial district where the jurisdiction thereof lies any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized by law to conduct.

The Department is informed that various persons, companies, corporations, firms, associations, and organizations to the Department unknown have violated in the above-named district and in other judicial districts the laws relating to extortion in aid of racketeering (18 U.S.C. 1951), embezzlement of union funds (29 U.S.C. 501(c)) and the funds of welfare and pension plans (18 U.S.C. 664), payments by employers to their employees and to officials of labor organizations (29 U.S.C. 186), the filing of reports and the maintenance of records by unions and union officials (29 U.S.C. 439), deprivation of the rights of a union member by force (29 U.S.C. 530), obstruction of justice (18 U.S.C. 1503), obstruction of criminal investigations (18 U.S.C. 1510), obstruction of state or local law enforcement (18 U.S.C. 1511), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), prohibition of illegal gambling businesses (18 U.S.C. 1955), racketeer influenced and corrupt organizations (18 U.S.C. 1962), perjury (18 U.S.C. 1621), false declarations (18 U.S.C. 1623), mail fraud (18 U.S.C. 1341), fraud by wire (18 U.S.C. 1343), interstate transportation of stolen property (18 U.S.C. 2314), wire and radio communication (47 U.S.C. 203 and 501), internal revenue (26 U.S.C. 7201-7206), and other criminal laws of the United States and have conspired to commit all such offenses in violation of Section 371 of Title 18 of the United States Code.

EXHIBIT A

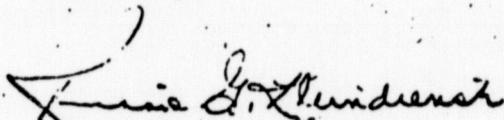
A 138

- 2 -

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division, Department of Justice.

Sincerely,



Richard G. Kleindienst  
Deputy Attorney General

A 139  
United States Department of Justice

ADDRESS REPLY TO  
UNITED STATES ATTORNEY  
AND REFER TO  
INITIALS AND NUMBER

JCS:ew

73-0753

UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURTHOUSE  
FOLEY SQUARE  
NEW YORK, N.Y. 10007

March 4, 1975

Elkan Abramowitz, Esq.  
Weiss Rosenthal Heller & Schwartzman  
295 Madison Avenue  
New York, New York 10017

Re: United States v. George Stofsky,  
et al., 73 Cr. 614

Dear Mr. Abramowitz:

In accordance with the request contained in your letter dated February 19, 1975, enclosed please find a copy of the letter appointing Gerard J. Hinckley a Special Attorney of the Department of Justice.

William Aronwald, presently Attorney-in-Charge of the New York Joint Strike Force, has advised me that it was Mr. Hinckley, alone, who presented to the grand jury the matters which resulted in the return and filing of Indictment 73 Cr. 614.

Very truly yours,

PAUL J. CURRAN  
United States Attorney

By: John C. Sabetta

JOHN C. SABETTA  
Assistant United States Attorney  
Telephone: (212) 791-1920

Enclosure

cc: Hon. Lawrence W. Pierce  
United States District Judge  
United States Court House  
Room 2601  
Foley Square  
New York, New York 10007

EXHIBIT B

A 140

United States Department of Justice

ADDRESS REPLY TO  
"UNITED STATES ATTORNEY"  
AND REFER TO  
INITIALS AND NUMBER

JCS:ew

73-0753

UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURTHOUSE  
FOLEY SQUARE  
NEW YORK, N. Y. 10007

March 4, 1975

Edward Brodsky, Esq.  
Goldstein, Shames & Hyde  
655 Madison Avenue  
New York, New York 10021

Re: United States v. Schwartzbaum,  
73 Cr. 616

Dear Mr. Brodsky:

In accordance with the request contained in your letter dated February 24, 1975, enclosed please find a copy of the letter appointing Gerard J. Hinckley a Special Attorney of the Department of Justice.

William Aronwald, presently Attorney-in-Charge of the New York Joint Strike Force, has advised me that it was Mr. Hinckley, alone, who presented to the grand jury the matters which resulted in the return and filing of Indictment 73 Cr. 616.

Very truly yours,

PAUL J. CURRAN  
United States Attorney

By: John C. Sabetta

JOHN C. SABETTA  
Assistant United States Attorney  
Telephone: (212) 791-1920

Enclosure

cc: Hon. Lawrence W. Pierce  
United States District Judge  
United States Court House  
Room 2601  
Foley Square  
New York, New York 10007

EXHIBIT C

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA,

against

GEORGE STOISKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES,

73 CR 614

OFFICE OF MOTION  
TO DISMISS THE  
INDICTMENT

Defendants.

-----x

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit  
of MICHAEL J. GILLEN, duly sworn to the 5<sup>th</sup> day of April,  
1975, upon the indictment herein, and upon all the proceedings  
herebefore had herein, the undersigned will move this Court,  
before the Honorable Lawrence Pierce, the United States District  
Judge assigned to this case for all purposes, on such date and  
at such time as the Court may direct, communicate with the  
availability of counsel, at the United States Courthouse,  
Foley Square, Borough of Manhattan, City and State of New York,  
for an order dismissing the indictment, pursuant to Rules  
12(b) and 6(d) of the Federal Rules of Criminal Procedure, on  
the grounds that an improperly authorized person was present  
in the Grand Jury returning the indictment, together with  
such other and further relief as is proper in the circumstances.

Dated: New York, N.Y.,  
, 1975.

Yours, etc.,

MICHAEL J. GILLEN  
Attorney for Defendants,  
CHARLES HOFF and CLIFFORD  
LAGEOLES  
233 Broadway  
New York, New York 10007

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TO:

HON. PAUL J. CURRAN  
United States Attorney  
Southern District of New York  
Foley Square  
New York, New York 10007

ROONEY & EVANS  
521 5th Avenue  
New York, N.Y. 10017

ELKAN A. LOWITZ  
295 Madison Avenue  
New York, N.Y. 10017

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA,

-against-

GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD and CLIFFORD LAGEOLES,

73 CR 614

AFFIDAVIT IN SUPPORT OF  
MOTION TO DISMISS THE  
INDICTMENT

Defendants.

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

MICHAEL J. GILLEN, being duly sworn, deposes and says:

1. I am the attorney for the defendants, CHARLES HOFF and CLIFFORD LAGEOLES.
2. This affidavit is made in support of the defendants' joint Motion to Dismiss the Indictment.
3. On June 21, 1973, a federal grand jury of the United States District Court for the Southern District of New York, filed indictment 73 CR 614 against the defendants. The indictment appears to have been duly signed by the United States Attorney for the Southern District of New York.
4. The foregoing indictment was not obtained by the United States Attorney for the Southern District of New York nor by members of his duly appointed staff. On information and belief, the local prosecutor's office was not responsible for the evaluation of the defendants' case, the presentation of evidence to the grand jury, or, the drafting of the indictment, or even the actual signing of the indictment. Rather, one Gerard J. Hinckley, a "Special Attorney" appointed by and

accountable only to the United States Department of Justice in Washington, D.C., and then operating under the title "Special Attorney, Organized Crime and Racketeering Section", at the address of 26 Federal Plaza, New York, N.Y. 10007 was the person responsible for the presentation of the evidence before the Grand Jury returning the indictment in the defendants' case. Moreover, by letter dated March 4, 1975, to defense counsel from Assistant United States Attorney John C. Sabetta, it is stated that Mr. Hinckley was the person who presented the evidence to the same grand jury in connection with the indictment.

5. The authorization for Special Attorney Hinckley's appearance before a grand jury in the Southern District of New York appears in a letter, a photocopy of which has been furnished to counsel as an enclosure to the aforesaid letter of March 4, 1975. The authorization letter (a copy of which is attached hereto) bears the date of January 7, 1972. It is addressed to Mr. Gerard J. Hinckley, Criminal Division, Department of Justice, Washington, D.C., on a letterhead inscribed Office of the Deputy Attorney General, Washington, D.C., 20530, and purports to be signed by Richard G. Kleindienst, Deputy Attorney General. This 1972 letter, which appears to be of a "boilerplate" form, purports to authorize Mr. Hinckley to act for the Department of Justice "in the Southern District of New York and in any other judicial district where the jurisdiction thereof lies" with authority equal to that of the local United States Attorney. The letter also declares that the Department is informed that unknown entities "have violated in the above-named district and in other judicial districts the laws..." contained in 26 named various states and "...other criminal laws of the United States...",

the letter being an all inclusive catch-all phrase that would encompass the entire United States Code. The letter further declares that "the Department is informed the unknown entities "have conspired to commit all such offenses in violation of Section 371 of title 18 of the United States Code." Mr. Hinckley, by the phrasing of the letter is expressly authorized "to assist in the trial of the case or cases growing out of [these] transactions...in which the Government is interested" including grand jury proceedings. It is a patently carte blanche authority.

6. Defendants submit that the purported authorization of Mr. Hinckley to conduct himself as a "Special Attorney" accountable to the Department of Justice in Washington and to appear before and present evidence to grand juries in the Southern District of New York is deficient in the following respects, inter alia:

- a) The Attorney General did not specially appoint or specifically direct Mr. Hinckley to conduct the proceedings herein.
- b) Upon information and belief, Deputy Attorney General Kleindienst was not properly delegated or subdelegated the Attorney General's authority to specially appoint and specifically direct special prosecutors to conduct proceedings.
- c) Upon information and belief, Deputy Attorney General Kleindienst did not in fact authorize the letter of January 7, 1972, to Mr. Hinckley.
- d) Upon information and belief, Deputy Attorney General Kleindienst did not in fact sign the letter of January 7, 1972, to Mr. Hinckley.
- e) Mr. Hinckley was, by the letter of January 7, 1972 neither "specially appointed" nor "specifically directed" within the meanings of 28 U.S.C. §515(a) to conduct the grand

jury proceedings in defendants' case. That is, the letter was written routinely, and not "specially", to further the non-statutory purpose to usurp the legitimate functions of the local United States Attorney by establishing in the District a permanent office of separate, if not special, prosecutors and accordingly was written prior to the convening of the instant grand jury, without specifying any "special case" or "pending" suit, H.Rep. No. 2901, 59th Cong. 1st Sess. 1,2(1906), and without even specifying any particular suspects or violations. Counsel would also respectfully suggest in passing reference that there is no showing herein that it was "necessary ... to have the assistance of one who is specifically or particularly qualified by reason of his peculiar knowledge and skill to properly present to the grand jury the questions being considered by it", Id. at 2, nor, for that matter, that the special prosecutor is so qualified at the time of his appointment. In fact, the letter does not constitute a specially appointed and specifically directed assignment to a case but instead amounts at best only to a generalized, if not roving, commission to function indefinitely in a general field contrary to the provisions of 28 U.S.C. §515(a).

(i) Defendants' case does not even come within the purported or real purpose of the "Organized Crime and Racketeering Section" of the Department of Justice. The charges in the instant case evolve from allegations of payoffs from a member of a trade association to union officials. None of the alleged givers or receivers are reputed "mafioso." The "organized crime and racketeering" elements for which the office of the Attorney General presumably created the "task force" of

"special attorneys" to combat and alleviate the supposedly hard pressed local United States Attorney's Offices, are not present in the instant case. The historical objective of the containment and destruction of the so-called organized crime "families", and the sole justification of the existence of the utilization of the particular "special attorneys" in the instant case, is missing here. The everyday powers of the office of the local United States Attorney have simply been systematically usurped, contrary to the intent of Congress, and such constitutes a plain, unauthorized, abuse of power. As such the material presented in the Grand Jury, in the instant case, was by an unauthorized person and in violation of law.

WHEREFORE, since Mr. Hinckley was not authorized under 28 U.S.C. §515(a) to function as a special attorney in the instant case his appearances before the presentations to the grand jury in the instant case violated Rule 6(d) of the Federal Rules of Criminal Procedure and the indictment obtained by him must be dismissed.

  
MICHAEL J. GILLEN

Sworn to before me this

day of November, 1975.

A 148

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v -

: 73 Cr. 614

GEORGE STOFSKY, CHARLES HOFF,  
AL GOLD, and CLIFFORD LAGEOLES, :

Defendants. :

-----x  
UNITED STATES OF AMERICA :

- v -

: 73 Cr. 616

KARL "JACK" SCHWARTZBAUM, :

Defendant. :

-----x  
ENDORSEMENT ORDER

The motion herein is denied since it was not  
made before trial as required by Rule 12(b)(2) of the  
Fed.R.Crim.P. See United States v. Crispino, 74 Cr.  
932, Slip Op. at 4 (S.D.N.Y. March 25, 1975).

SO ORDERED.

Dated: New York, New York  
June 4, 1975

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LAWRENCE W. PIERCE  
U. S. D. J.